

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

July 29, 1999

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning commission was held Thursday, July 29, 1999 in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present. Frank Garofalo, Vice-Chair; Chris Carraher; John C. Frye; Richard Lopez; Ron Marnell; John W. McKay, Jr.; Jerry Michaelis; Susan Osborne-Howes; George Platt; Ray Warren; and Deanna Wheeler. George Fulp, Bud Hentzen, and Bill Johnson were not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Joe Lang, Senior Assistant City Attorney; Keith Gooch, Senior Planner, Donna Goltry; Senior Planner; Lisa Verts; Associate Planner; and Karen Wolf, Recording Secretary.

In the absence of Bill Johnson, Chair, Frank Garofalo, Vice-Chair, chaired the meeting.

MOTION: That the Metropolitan Area Planning Commission recess into executive session for 30 minutes to consider consultation with Legal Counsel on matters privileged in a client/attorney relationship relating to pending claims in litigation. And that the MAPC return from executive session no sooner than 1:10.

GAROFALO moved, **FRYE** seconded the motion, and it carried unanimously (11-0).

The Commission reconvened at 1:35 p.m.

GAROFALO "The Commission took no official action while in executive session. I would like to recognize Commissioner Frye."

MOTION: That the Metropolitan Area Planning Commission authorize the Sedgwick County Counselors to settle Case No. 99-C 1-462 by having court enter order approving plat as submitted.

FRYE moved, **MICHAELIS** seconded the motion, and it carried with 10 votes in favor (Wheeler, Michaelis, Carraher, Frye, McKay, Platt, Garofalo, Warren, Osborne-Howes, and Marnell). Lopez opposed.

2. Approval of minutes for April 29, 1999.

MOTION: That the Planning Commission approve the minutes of the April 29, 1999 meeting as submitted.

WARREN moved, **FRYE** seconded the motion, and it carried unanimously.

MOTION: That the Planning Commission approve the minutes of the Comprehensive Plan meeting on July 22, 1999 as submitted.

CARRAHER moved, **MICHAELIS** seconded the motion, and it carried unanimously.

Consideration of Subdivision Items

PLATT "I would like to pull item 2/1 for some questions."

- 2.** Subdivision Committee items 2/2, 2/3, 2/4, 2/5, 2/6 and 2/7 were approved, subject to the Subdivision Committee recommendations. **FRYE** moved, **MCKAY** seconded the motion, and it carried unanimously (11-0).
- 2/2.** S/D 99-48 – One-step final plat of WESTRIDGE COMMERCIAL ADDITION, located on the southeast corner of 119th Street West and 29th Street North.
 - A.** This site adjoins the proposed Westridge Addition to the south, which will need to be annexed to allow for the lot sizes being platted. Subsequently, this site will adjoin the City of Wichita and a request for annexation is requested.
 - B.** City Engineering needs to comment on the need for guarantees or easements. Sewer and water guarantees are required.
 - C.** If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
 - D.** City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A

drainage guarantee is required. A cross-lot drainage agreement is required.

- E. In accordance with DP-235, the Applicant shall guarantee the construction of two lanes of roadway along 29th Street North and 119th Street West with a left turn lane at the intersection of both of these roadways. A guarantee shall also be provided for an accel/decel lane along the entire 29th Street North and 119th Street West frontage. The applicant shall provide a guarantee for 12.5% of the traffic signal at the intersection.
- F. If the pipeline easement indicated on the plat is encumbering the plat, it shall be shown and the plat will be subject to the standard pipeline conditions. Otherwise, verification must be provided that the easement is off-site or has been released.
- G. Traffic Engineering shall comment on the access controls. The plat denotes three access openings along both perimeter streets. Distances shall be shown for all segments of access control. Subdivision Committee has permitted three access openings along both perimeter streets. Complete access control is required along 119th St. West for the north 175 feet of Lot 1. Complete access control of 150 feet shall be required along both streets from the intersection. Access to and from Lot 2 is limited to right turns only and shall consist of joint access easements with Lot 4 along both streets.
- H. The legal description needs to be revised to reference the "north 684 feet".
- I. A cross-lot circulation agreement and joint access agreement shall be established by separate instrument to assure internal vehicular movement between the lots.
- J. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- K. A CUP Certificate shall be submitted prior to City Council consideration, identifying the proposed CUP (referenced as DP-235) and its special conditions for development on the property.
- L. The final plat tracing shall include a note placed on the face of the plat that this Addition is subject to the conditions of Community Unit Plan DP-235.
- M. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell has requested additional easements.
- V. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department

- A. This site is located in the County's Four-Mile Creek sewer system and will be served by the County.
- B. City and County Engineering need to comment on the situation involving existing guarantees for this site and requirements for providing new guarantees.
- C. The applicant shall guarantee the extension of City water to serve the lots being platted. These improvements will be with the City of Wichita and consequently an outside-the-city water agreement shall be provided. Due to existing water petition along 159th St., City Engineering should comment on the need for a respread agreement needed for special assessments due to the revised lot configuration.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. County/City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- F. Provisions shall be made for ownership and maintenance of the proposed reserve. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- H. The platting of off-street parking areas proposed for Reserve A shall be shown as parking easements and need to be referenced in the plat's text.
- I. The applicant shall guarantee the installation of the interior street extension to the urban subdivision standard.
- J. The right-of-way for Grand Mere shall be denoted on the final plat tracing.
- K. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The final plat shall reference a tie point to a section corner.
- M. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- N. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka.

Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

2/4. S/D 99-47 – One-Step Final plat of MOUNIVONG ADDITION, located on the south side of 27th Street South, west of Meridian.

- A. City Engineering needs to comment on the need for any guarantees or easements. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- E. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- F. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- G. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- H. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- I. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- J. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- K. Perimeter closure computations shall be submitted with the final plat tracing.
- L. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- M. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- N. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

2/5. S/D 99-46 – One-Step Final Plat of GILNOCKIE LOCHS ADDITION, located on the south side of 77th Street North, east of Greenwich Road.

- A. Since sanitary sewer is not available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. Standard soil testing is required. A site plan is required to determine lagoon placement.
- B. The site is currently served by Rural Water District No. 1. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter from the water district regarding any requirements.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. A drainage plan is required. A joint usage agreement for the pond is required.
- E. County Engineering needs to comment on the access controls. The plat proposes one access opening per lot along 77th St. North. The access controls are acceptable.
- F. For the County Commissioners signature block, Bill Hancock is the only signature required.
- G. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- H. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- I. The northeast tie point needs to reference Section 3.
- J. The minimum building pad elevation referenced in the plat's text needs to be specified in NGVD.
- K. Both lots exceed the maximum lot width to lot depth ratio of 2.5 to 1. A modification will need to be approved.
- L. The MAPC Chair should be revised to reference "William M. Johnson".
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

2/6. D-1764 – Dedication of a Utility Easement.

OWNER/APPLICANT: Joel and Associates, C/O Brent Hurst, 221 S. Broadway, Suite 302, Wichita, KS 67202.

LEGAL DESCRIPTION: The south two feet of the north ten feet of Lot 27, and the south two feet of the north ten feet of the east 66 feet of Lot 28, all in Spurrier Gardens, Sedgwick County, Kansas; and the west two feet of the east ten feet of Lot 27, Spurrier Gardens, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This dedication is a requirement of an approved Lot Split (L/S-1009). City Engineering required this additional two-foot easement to conform to the 10-foot standard.

Planning Staff recommends the granting of this dedication be accepted.

2/8. D-1765 – Dedication of a Utility Easement

OWNER/APPLICANT: Habitat for Humanity, C/O Brent Norris, P.O. Box 114 Wichita, KS 67212

LEGAL DESCRIPTION: The north 15 feet of the following described tract:

Lot 1, Block 1, University Heights Second Addition to Wichita, Sedgwick County, Kansas, except that part described as beginning at the southwest corner of Lot 1; thence northeasterly along the west line of Lot 1, 150 feet; thence easterly 83.6 feet, more or less, to a point on the east line of Lot 1, said point being 150 feet north of the southeast corner of Lot 1; thence south 150 feet to the southeast corner thereof; thence west along the south line of said Lot 1, 69 feet to a deflection point; thence northwesterly 68.8 feet, more or less, to the point of beginning.

PURPOSE OF DEDICATION: This dedication is a requirement of a Lot Split (L/S-1012) for construction and maintenance of public utilities.

Planning Staff recommends the granting of this dedication be accepted.

Item taken out of order:

2/1. S/D 97-82 – Revised one-step final plat of WESTGATE VILLAGE 2ND ADDITION, located on the northwest corner of Maize Road and 13th Street North.

- A Municipal services appear to be available to serve this site. City Engineering needs to comment on the need for guarantees or easements.
- B If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. A cross-lot drainage agreement is needed. A drainage guarantee is required.
- D. Traffic Engineering needs to comment on the proposed access controls. The Subdivision regulations encourage shared access points for multiple lot commercial sites along arterials, and the plat denotes a joint access along Maize Road between the plat and the plat zoned LC, Limited Commercial to the north. Another opening is proposed along Maize Road, and two openings proposed along 13th St. North. The applicant shall guarantee the closure of any driveway openings being located in areas of complete access control. Traffic Engineering requires 150 feet of complete access control along Maize Road from the intersection. Lot 2 shall have complete access control along 13th St. North. The opening along 13th St. North is limited to right turns only. If located within 250 feet of the intersection; otherwise full turns are permitted.
- E. Traffic Engineering shall comment on any improvements required for perimeter streets. Traffic Engineering has required a right turn lane for westbound 13th St. North and for Maize Road.
- F. The proposed joint access easement will need to be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should be addressed by the text of the instrument.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- H. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- P. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

NEIL STRAHL, Planning staff "Is there a question on this item?"

PLATT "It seems to me that at the Subdivision meeting, we talked for a few minutes on the platting engineering related to the openings and the location to be worked out before the Committee."

STRAHL "That is correct. That has been resolved, and I can explain how that was worked out. This is Lot 2 here on the southwestern portion of the plat. The applicant has dedicated complete access control on that lot. No openings would be permitted at that location. There will be one opening permitted along 13th Street North, which will be located 250 feet west of the curb line. That was the issue that was not resolved last week. That is the subdivision regulation on 250-foot separation. The question last week was where do you measure that? Do you measure it from the intersection, the street lines, or do you measure it from the curb line? Traffic Engineering has informed me that their interpretation is that the measurement is from the intersection of the curb line.

So again, that would be one opening on 13th (indicating) right about there, and the applicant also has platted one opening along Maize on the northern portion of the plat, which would be a joint opening in combination with the plat to the north. Complete access control along the remainder of Maize Road. That resolved all of the traffic issues from last week."

GAROFALO "Are there any other questions of staff?"

MCKAY "Did you say the applicant has agreed?"

STRAHL "Yes."

GAROFALO "Are there any other questions? If not, what is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that this request be approved.

FRYE moved, **WHEELER** seconded the motion, and it carried unanimously (11-0).

FRANK GAROFALO, Vice-Chair, read the following zoning procedural statement, which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

2/8. Case No. V-2187 – Jon L. and Susan K. Haney request the vacation of a portion of a building setback, described as:

The south six feet of the 30-foot platted building setback on Lot 10, Block N. Westridge Village, Wichita Sedgwick County, Kansas, generally located on Holland Lane and Timothy Lane (1536 N. Holland Lane).

- A. City Public Works needs to comment on the acceptability of this vacation and if any substitute easements and/or dedications should be required, especially of water and/or sewer lines.
- B. The Utility Representatives need to comment on the acceptability of this vacation and any requirements.
- C. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- D. The applicant shall file an Administrative Adjustment on said lot to reduce the front building setback from 25 feet to 24 feet.
- E. The applicant is advised that the additional garage bay must be 6 feet away from the east property line to be in compliance with the Unified Zoning Code requirements for interior side setback in the "SF-6" zoning district.

LISA VERTS, Planning staff, "The applicant is requesting to vacate 6 feet of a 30-foot platted front yard building setback. The applicant plans to add a third bay to his existing 2-car garage. Staff is recommending approval on this. The Subdivision Committee also recommended approval, subject to one condition that an Administrative Adjustment be filed to reduce the zoning setback from 25 feet to 24 feet.

The applicant is on the corner of Holland and Timothy Lane. The existing house and garage are already built into the 30-foot setback, as are all of the houses along Holland. The applicant is simply requesting the vacation so that he can get a building permit to add that third bay to the garage. I do have copies of the site plan if anyone wishes to review it."

GAROFALO "Are there any questions of staff? Is there anyone here in the audience who wants to speak to this agenda item? Seeing none, I will bring it back to the Commission."

OSBORNE-HOWES "Let me just see if I am right. The existing two-car garage is already 6-foot into the setback, and in addition to that, he wants to go further?"

VERTS "No. He just wants to extend it along that same 6 feet, into the setback."

OSBORNE-HOWES "Okay. Thanks."

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

OSBORNE-HOWES moved, **FRYE** seconded the motion, and it carried unanimously (11-0).

OFF-THE-AGENDA-ITEM

Case No. V-2179 – Boyer Wichita Medical (Owner), request the vacation of an access control, on property described as:

The east 50 feet of the north line of Lot 1, Lancaster Addition, Wichita, Kansas. Generally located on the east of Hillside and south of Country Club Place.

The applicant is requesting to vacate access control along the eastern 50 feet of Lancaster Addition. This would permit a driveway to Country Club Place, which would serve a trash dumpster and a handicap van parking space. The eastern 372 feet of Lancaster Addition was platted with complete access control. The applicant has stated that a medical complex will be constructed on this property in the near future.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time June 1, 1999, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described access control, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of access control described in the petition should be approved.

The Subdivision Committee recommends approval.

KEITH GOOCH, Planning Staff "This item was deferred from the June 24 meeting, to allow for the Board of Zoning Appeals to hear the request to reduce compatibility setbacks along the south line where adjacent to the 'TF-3' duplex zoning, as well as to allow the applicants to meet with the neighbors and reach some sort of agreement with reducing that compatibility setback.

The agreement was just handed out to you, and you should have it in your hands. It is detailing landscaping and trash pick-up and other items that were reached in this agreement. Staff is recommending approval of the request. The Board of Zoning Appeals did hear this request for the compatibility setback variance request. They heard it on Tuesday and approved it. Are there any questions of staff?"

KROUT "Keith, I have a question. Is this a private agreement, and we are not expected to either enforce either to the BZA or the vacation process?"

GOOCH "Correct. It was a private agreement between the Boyer Company and the neighbors."

KROUT "Okay."

GAROFALO "Are there any other questions?"

MICHAELIS "Just for future reference, what happens if these neighbors move out and other neighbors move in?"

GOOCH "The agreement is still binding. I am not sure how they are going to do the private agreement. If they file a covenant or something, it could be binding, but if it just an agreement between these neighbors and the next neighbors, the City is not involved."

KROUT "I don't think this is a binding agreement that can be enforced by future owners."

GOOCH "The agent is here and they can explain if there is another document that is going to be filed, or recorded or anything. They can also tell you exactly how that agreement will be handled in the future."

GAROFALO "Are there any other questions of staff? Is there anyone in the audience in the audience who would like to speak to this case? Okay. Could we hear from the applicant or agent?"

RUSS EWY "I am with the Baughman Company, agent for the applicant. Again, what you are seeing in front of you is the agreement between the adjacent property owners to the south and to the southeast that had primary intention of serving the BZA variance. Again, we are asking for a vacation of access that really there are very few items in that list of things that you saw that really affect the vacation portion of it, or so we believed.

As far as being binding, this is not a document that is going to be revised and placed in a restrictive covenant format and filed with the Register of Deeds or anything of that nature. It is a binding agreement between the current property owners and the applicant."

MICHAELIS "So it is more of an understanding?"

EWY "Exactly."

KROUT "Do the neighbors understand that?"

EWY "The neighbors understood that and signed and initialed it. I might want to add that several of the representatives from that neighborhood, there were about 6 or 7 people directly involved and 4 of them showed up to BZA last Tuesday. I believe Dale, Keith and other staff members that were there would support me on my statement that there is quite a good working relationship that came out of this month deferral. I can assure you that the neighbors are pleased with what they were able to obtain from the applicant."

GAROFALO "Are there any questions of Russ? Is there anyone here to speak in opposition to this, or wants to speak to this case? If not, we will take it back to the Commission."

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

WARREN moved, **FRYE** seconded the motion, and it carried unanimously (11-0).

ZONING:

3. **Case No. CU-521** – David L. Fansler & Lorrie A. Carpenter (owners); Henry H. Blase (agent) request a Conditional Use to permit vehicle sales on property described as:

Lot 1, Block 1, Fansler Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of West Street, 260 feet north of Murdock.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

This case was referred back to MAPC for reconsideration by the City Council on June 8, 1999. The reconsideration was originally scheduled for June 24, 1999, but was deferred to July 29, 1999, at the applicant's request.

The case was referred back to MAPC by the City Council because of uncertainty of neighborhood opposition. Protests were filed representing 46.74 percent of the land area within 200 feet of the application area. On the day of the City Council action, the applicant's agent presented requests for withdrawal of the protests by the majority of protestors. Protests must be withdrawn, at the latest, the day before the case is to be heard. Therefore, the Law Department ruled that it was too late to withdraw the protests. This meant that a supermajority vote would have been required for approval of the Conditional Use.

Since that time, one additional request was received to withdraw a protest. No request has been received for withdrawal of the protest petitions representing 12.26 percent of the property within 200 feet of the application area.

A copy of the minutes from the City Council meeting is attached, along with a copy of the referral sheet to City Council and includes a copy of the excerpts from the MAPC meeting held May 13, 1999, and a copy of the Staff Report presented at that meeting.

It should be noted that there was a similar case, CU-524, for vehicle storage, outdoor, located at the northwest corner of West Street and Murdock, heard by City Council on July 20, 1999. The Council voted (5-0) to deny the case.

BACKGROUND: The applicant is requesting a Conditional Use to allow vehicle sales on a 0.598 acre property located on the west side of West Street approximately 260 feet north of Murdock Boulevard. This platted tract is zoned "LC" Limited Commercial. The sale of vehicle and equipment with outside display/storage requires a Conditional Use within the "LC" Limited Commercial Zoning District.

The applicant currently operates a vehicle sales operation inside a garage. The garage was originally permitted as a residential structure associated with the house located on the southern part of the lot. After constructing the garage, the applicant sought to convert the occupancy permit from residential to commercial in order to sell used cars, and has installed an asphalt parking lot in the front portion of the lot. As part of the rezoning to "LC" granted in 1993, the applicant indicated he intended to sell used cars. He was advised that this required a special use permit from the Board of Zoning Appeals, and the staff report noted "Staff's support of light commercial zoning at this location should not be interpreted as support for outdoor car sales. Because an application for a use exception has not been made, staff has not evaluated the appropriateness of car sales at this location" (Staff Report, September 9, 1993). The process has been changed and now requires a Conditional Use. The applicant is seeking a Conditional Use for vehicle sales in order to place up to 14 cars for sale on the asphalt parking area in front of the garage.

The Unified Zoning Code requires auto businesses to provide customer parking at the rate of two spaces for the first 10,000 square feet and one space per each additional 10,000 square feet of lot area used for vehicle sales, display, or storage purposes and one space per 500 square feet of building area. The site plan shows approximately 858 square feet for vehicle sales, display and storage, which would require a total of two spaces. The building (1,800 square feet) would require four additional parking spaces, for a total of six parking spaces. The site plan shows only four spaces.

There are small-scale commercial uses located along this block of West Street between Murdock and 9th Street. The mix includes freestanding structures, a small commercial center, and several houses used for commercial purposes, as well as the residence on

this site and one other house located to the northeast of the application area still used as residences. The range of commercial uses include: restaurants, alterations shops, insurance offices, personal care services, and auto parts and repair, etc., with most being neighborhood-serving retail uses. There is no other outdoor storage in this block, or in any portion of West Street north of Central.* An apartment complex, Westview Apartments, is located directly across the street to the east. Residential properties are located west of this site facing onto Colorado Street and adjoining the rear property line. This is a well-maintained residential block of single family residences.

CASE HISTORY: The property was platted May 24, 1994 as Fansler Addition, and is a re-plat of a portion of Galyards First Addition (1955). It was rezoned from "AA" One-Family and "B" Multi Family to "LC" Limited Commercial on October 12, 1993.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" Limited Commercial; Commercial uses

"B" Multi Family (this property was rezoned "LC" contingent upon platting, which has not been finalized)

SOUTH: "LC" Limited Commercial; Commercial uses

EAST: "LC" Limited Commercial; Apartments, commercial uses

"B" Multi Family

WEST: "SF-6" Single Family Single family residences

PUBLIC SERVICES: This site has access to West Street, a five-lane arterial. The existing traffic volumes were 18,439 (ADTs) in 1997. The 2020 Transportation Plan estimates these volumes will remain stable. Municipal services are available to serve this site. The property has access limited to one opening per the plat for Fansler Addition.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for commercial uses. The commercial locational guidelines of the Plan recommend that commercial uses not located in planned centers, including auto-related uses, should be guided to cluster in areas such as CBD fringe, segments of Kellogg and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses and utilities can support these uses.

RECOMMENDATION: Staff does not feel vehicle sales is an appropriate use at this location because there are no other vehicle sales lots in the immediate vicinity, and due to the outside storage associated with vehicle sales, which is not permitted for other "LC" zoned properties along West. The nearest vehicle sales lots are 0.7 mile south of the application area. The approval of this request could also establish the precedent of vehicle sales along West north of Central that does not conform to the Comprehensive Plan.

Based upon information available prior to the MAPC, planning staff recommends this request be denied. However, if the Planning Commission believes this is an appropriate use staff recommends approval be subject to the following conditions;

1. No more than 12 vehicles can be for sale on this sales lot at any one time.
2. This property shall be developed in accordance with a revised site plan that shows the required 6 parking spaces for employees and customers. The site plan shall also designate which spaces shall be used for customer and employee parking and which spaces will be for the display of vehicles. The required customer and employee parking shall not be used for any display of vehicles.
3. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
4. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be done on the premises without first obtaining "GC" General Commercial zoning.
6. Only those signs permitted in the "LC" zoning district shall be permitted on this site, except that no portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be used.
7. No sound projecting devices or loudspeakers shall be used on-site.
8. There shall be no use of elevated platforms for the display of vehicles.
9. The applicant shall comply with landscape street yard requirements and parking lot screening of any required parking spaces along West Street.
10. Any violation of the conditions of approval shall render the Conditional Use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site has commercial developments located to the north, the south and to the northeast and southeast, which are zoned "LC" but are not permitted outside storage. Some of these uses are housed within residences converted to commercial or office use. An apartment complex is located across West

Street from the application area on "LC" zoning. The site is located in the interior of the block. All the property west of the site is single family residential. The nearest outside auto display lots are 0.7 mile away.

2. Extent to which removal of the restrictions will detrimentally affect nearby property: This general area is characterized by mostly small neighborhood retail uses and residential nearby. The outdoor storage involved with the vehicle and equipment rental business is not compatible with the uses found in this general location.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan recommends auto related uses be located along CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses and utilities can support the uses. The application area is not along the CBD fringe, Kellogg, nor are any other similar uses found in the general vicinity. Therefore, this request does not correspond to the Comprehensive Plan. The approval of this request could possibly allow for additional vehicle sales operations to be located along West Street to the north or south of this site.
4. The suitability of the subject property for the uses to which it has been restricted: The tenant is currently operating an indoor car sales business at this location. Other retail uses would also be appropriate at this location.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on the community facilities.

GOLTRY "We have heard this case and similar cases recently, because we have had a similar case that was only about a block and a half south of this at a recent MAPC hearing that has also gone to the City Council and the City Council did take final action on it last Tuesday. They voted 5-0 to deny that case. Are there questions?"

GAROFALO "Are there questions of staff? No questions at this point? Well, I have one. This was not taken back to the CPO?"

GOLTRY "No, it was not."

GAROFALO "Okay. Applicant or agent."

HENRY BLASE "Members of the Commission, I live at 2302 North Hood, here in Wichita. I am the agent for the applicant in this case, and we were before you in May of this year to present this case.

I don't necessarily want to rehash all of the things that were said then. I think you have the report, the minutes of that meeting, so you have had the opportunity to read what our position has been. There are a couple of things, and I realize that some of you are new and may need, perhaps, some fill-in of that. And perhaps your questions of me might be more appropriate than my reiterating everything.

There are a few things, though, that I would like to state. I would like to correct one thing that Donna said relating to the number of cars on this application. She indicated the number of 12, and the application is for 14. There was initially some confusion in the number of parking spaces that were for employees and customers, and the site plan needed to have 6, and 4 were shown. So the staff recommendation was to reduce 2 of the 'for sale' slots and make them parking for customers and employees. A revised site plan has been submitted that does have 6 parking spots for customers and employees and retains the 14 outdoor sales slots. So that is what the request is, for 14 outdoor vehicle sales spaces.

I would also like to point out one thing with regard to this area. The area from Central to Zoo Boulevard is primarily a commercial area. There are 71 businesses on either side of West Street between Central and Zoo Boulevard. There are four residences, one of which is inhabited by the applicant. So outside of the applicant, there are only three other residences on that entire strip.

There has been a lot said about outdoor storage. We really need to look at what outdoor storage is. When you look at any parking lot, that parking lot does store cars. Now there may be a difference between a temporary storage and a permanent storage. I think the difference that is being applied to this case is that this is permanent storage where these cars will stay there all of the time. The bottom line of it is that this is a Conditional Use permit. It is the opportunity for the Planning Commission to impose restrictions and conditions upon the use of this property for that type of use and eliminate what might be objectionable to neighbors, other people that might go through the area, or the community in general.

I think that has been done in this case with the limitations that are imposed on these requirements. The applicant has no objection to those. Those are perfectly within the keeping of his business, as he intends it to be. I would also point out that in regard to outdoor storage, immediately across the street from the applicant's property is an apartment complex. Immediately adjacent to that apartment complex on the north is a company called J & J Fence Company. That company has an outdoor storage lot of its fencing supplies and materials. I don't understand why that is not called outdoor storage. I do have a couple of pictures of that, if that is of interest to any of you, and I would be happy to pass them around. There are three pictures that show that outdoor storage.

We would reiterate that the storage that is involved with this lot is merely the parking of cars with no streamers, no banners, no flags, nothing that ordinarily may be considered objectionable. I would like to discuss, for a minute, that you were advised that the City Council did vote to deny application that came in after ours, CU-524. But I would also like to tell you, and quote to you from what Joan Cole had to say at that City Council meeting. She said 'I believe it is very likely that the first one, this one, may go forward, and I am hopeful that this neighborhood will not enjoy two within that same block on West Street'. In other words, the rationale that she gave for denial of that one is that it was likely that this one was going forward and she didn't want to see two.

The difference, as she explained it in her mind, between this one and the next one was that this one has an existing use of car sales, and the other application did not. It would be a new use. The rationale that this case was sent back to you on was because of the neighborhood opposition that was apparent when it got to the City Council. There were 12 property owners that submitted protest petitions at that time. There were 10 of those property owners that subsequently withdrew their petition. In your packet of information given to you today, you received a copy of each of the protest petitions. Quite a few of those were signed by the same property owner, being the apartments across the street. I counted them as one owner. The other ten property owners that signed withdrawals all lived on the residential street Colorado, immediately behind the applicant's area.

I want to read to you the withdrawal protest petition that you did not get in your packet. That is in the file. 'The undersigned (their names) owners of (Lot and block numbers) do hereby withdraw the protest petition previously signed by them, which was filed in Conditional Use Case No. CU-521, on or about May 26, 1999, and do hereby urge the City Council of the City of Wichita, Kansas to approve the recommendation of the Metropolitan Area Planning Commission entered in said case on the 13th day of May, 1999 to approve the Conditional Use permit of David and Lorrie Fansler to allow the display of vehicles outside on their premises at 843 North West Street, Wichita, Kansas, according to the conditions and limitations recommended by said Commission'. If any of you would like to review those, I do have an extra copy, and would be happy to pass them around, although they are in the file.

Subsequent to that City Council hearing, in an effort to provide you with information relative to what the neighbors felt about this, the neighbors were again questioned about what they desired and what their thoughts were. In that regard, many of them signed a statement that I will leave with your secretary, in fact eight of eleven property owners on Colorado Street signed this. Of the persons who originally filed protests, two of those owners were not available to be contacted, one person wanted to be here in person to tell you himself.

I will read you what this says. 'The undersigned, all resident homeowners living within the protest area in the 800 block of Colorado Street, in Wichita, Sedgwick County, Kansas, do hereby state that we are familiar with the Conditional Use permit application of David and Lorrie Fansler, contained in Conditional Use case No. CU-521, to allow the display of vehicles outside on their premises at 843 North West Street, Wichita, Kansas, in accordance with the conditions and limitations recommended by the Metropolitan Area Planning Commission. In our opinion, the proposed use of displaying vehicles for sale outside at 843 North West Street, according to the terms of the Conditional Use permit will not be a detriment to our neighborhood, and we are not opposed to it. In fact, we encourage the approval of the Fansler Conditional Use permit application, Case No. CU-521. Furthermore, we authorize David W. Bishop and Donna J. Bishop, jointly or individually, to speak in our behalf at any meeting of the Commission or the Council to express the views of our neighborhood pertaining to a subject matter of Conditional Use Case No. CU-521'.

As I mentioned, several of the residents are here and want to speak to you personally. Mr. Herb Duncan is here, along with his wife, and Donna and David Bishop are also here. I will conclude my remarks and ask for any questions you might have."

MICHAELIS "Where is J & J Fence in relation to this property?"

BLASE "I will try to find the diagram of the area. You can see this building right here. That is the J & J Fence Company. Right next to the company, there is an open fence, their storage yard is right behind it, which is accessible from either West Street through this driveway, or off of Ninth Street, coming from the north into the property."

MICHAELIS "So it sits pretty well kitty cornered across the street?"

BLASE "Yes. The other diagram of the area itself shows you a pretty good proximity."

MICHAELIS "Okay. Thank you."

BLASE "In this case, it is actually Eighth Street. It is that property right there."

OSBORNE-HOWES "Are they approved for outdoor storage?"

BLASE "I don't know if they are or not."

KROUT "No. That is 'B' zoning, which doesn't even permit commercial use, so it is a non-conforming use, even if it was just Limited Commercial that would still be a non-conforming use. No one has asked anyone to research whether it is a legal non-conforming use or not. It probably has been there for a long time, but definitely does not conform to the zoning there."

GAROFALO "Are there any other questions? Is there anyone else here to speak in favor of this zoning request?"

MILTON DUNCAN "I live at 814 North Colorado, have lived there since 1965. The reason I am here is because when these types of things start going in behind my property, and I had a situation in the past where a bar went in less than 100 feet from my children's bedroom window, and we have been fighting them every since, that has gotten my attention.

I have no problem with Mr. Fansler putting in a sale of automobiles at that location where he is right now. He is a good neighbor. He takes care of his property, takes pride in it, and cleans things up. I am glad to have him as a neighbor. I have no problem with that. But looking ahead, as was stated before, we had another application for another car lot to go in. What I do not want is for us to become a used car lot strip. I know of some automobile dealers that are open 24 hours a day. Within time, modifications and things can happen. My philosophy is that I would rather stay out of trouble rather than trying to fix things up after things happen. I would like to avoid the mud hole, so to speak.

I have no problem with them conducting sales there; he is a hard working man trying to make a living, trying to pay his taxes. As you all know, taxes keep going up. He is really trying to improve things with what he is doing. I have no objections at all about the business he is trying to promote at that location, even the automobiles sitting outside. I think that would not be a detriment to the neighborhood. Do you have any questions for me?"

LOPEZ "Did you originally sign the protest petition?"

DUNCAN "Yes, I did."

LOPEZ "What made you change your mind?"

DUNCAN "When the petition was presented to me at first, I made the mistake of going on emotion. It was a hurry-up, we need to get this stopped type of thing, dah, dah, dah. I made an error in judgement there. After thinking about it longer and about my situation, that is when I started looking at what was going on behind me."

OSBORNE-HOWES "I have two questions. You are saying that you don't want the proliferation of these types of car lots on West Street?"

DUNCAN "Yes, ma'am."

OSBORNE-HOWES "But you don't mind one? You just don't want more than one? I guess I am confused why you would okay this if you don't want to see that on West Street."

DUNCAN "Okay. Considering the individual and knowing his reputation. He has lived there for a considerable amount of time."

OSBORNE-HOWES "Okay. Well, my second question is, do you understand that you are approving zoning. He could sell this tomorrow to someone else and it doesn't just stay with him, it stays with the property. Someone else could move in and do things very differently. That could happen two minutes from now."

DUNCAN "I sent a fax to Mr. Schroeder. Did you folks get a copy of that letter? I addressed that point at the very bottom. The last couple of sentences here, I will just go ahead and read it to you, 'I do not want our little area to be used as a car haven without all of the problems that go with it. It looks as if the door has widened a little bit more'. That was when the second application came in and I was made aware of it. 'With another used car dealer wanting to open another used car lot at Murdock and West Street, what kind of safeguards do we have, what kind of protection would we have if politics and money were left alone to work their spell'.

I don't have a crystal ball. I can't see what is going to happen in the future. I have seen things like this happen before in our community where politics and money do bend the rules and make things happen."

OSBORNE-HOWES "So I guess my questions is do you oppose the other one?"

DUNCAN "Yes. I do oppose that, but I accept his use of his property."

OSBORNE-HOWES "I just want to get it clear that if we approve this that it would go with the land. It doesn't reside with the individual who is requesting this zone change."

DUNCAN "I would not have any problem with that so long as if, as an example, someone comes in and purchases that property. Then they expand to the property to the south and to the north, and then pretty soon, it just keeps growing, growing and growing and now we have no privacy, we have lighting, we can't go out and sit and watch the stars. That kind of thing is what I do not want. But, if in this situation if there is a Conditional Use, if he sells his property, then it goes away."

OSBORNE-HOWES "No, it doesn't."

DUNCAN "You can't do that?"

OSBORNE-HOWES "No. It stays."

MCKAY "Sir, if the application to the south would have been approved last week, would you still be in favor of this?"

DUNCAN "No, I would not."

GAROFALO "Are there any other questions of Mr. Duncan? Thank you. Is there anyone else to speak in favor?"

DAVE BISHOP "I live at 822 North Colorado. Our property is immediately behind this property in question. These folks have been good neighbors. I have talked with the neighbors all around and they are the ones who have withdrawn their earlier statement because they were misinformed about what would happen here. We are very much in favor of them going ahead with their particular project. As I look out my back door this time of year, I can't even see their property because there is a barrier of trees.

But they have been good neighbors and I have appreciated them. I think our other neighbors have, too. We have talked about it and they are all for them going ahead with this. We see no problem. With regard to the property down at Murdock and West Street,

I didn't want to get involved with that one. That was a little further away. But we are very much in favor of this one and them having the privilege of expanding. They already sell. They simply want to be able to display their cars. I believe that for the most part they plan to bring them in at night. He doesn't have hail insurance and would not want the cars outside. That is my statement."

OSBORNE-HOWES "I will ask you the same question. Do you understand that this zoning stays with the land?"

BISHOP "Yes. I did not understand that initially. I thought there were some restrictions that even now if they are violated, the permit can be lifted, but I could be mistaken."

GAROFALO "Are there any other questions of Mr. Bishop? Okay. Thank you. Is there anyone else who wants to speak in favor of this application? Aren't you the applicant, sir?"

MILLER "There is a minute and forty-one seconds left in the applicant's time."

DAVID FANSLER "I really had nothing more to add than what my agent has already said. I am just here to answer any questions if anybody had any that I might be able to answer as the applicant."

MICHAELIS "The previous person just mentioned that the cars were going to be taken in at night. Is that the condition?"

FANSLER "No, it is not. Right now, I have a garage that will store roughly ten cars, and if I have 14 of them out there, I will move most of them inside. I don't have that as a restriction, and I would rather not have that as a restriction in case I have 15 cars, or even 12 cars. I couldn't move them all inside. I can only put about 10 inside at this point. I will move them back toward the building a little bit if I have to, to get them off of the street area. My intentions are to have 14, and like I said I couldn't have all of them in the garage."

GAROFALO "If you have 14 cars, will you put 10 in and leave 4 out?"

FANSLER "It is very possible that I will. I don't like to leave them out, simply because of vandalism purposes. I really don't want it to be stipulated that I have to put 10 cars in every night, but it is probably my intention. I just don't like the vandalism issue, and I like to lock my cars up."

GAROFALO "Okay. Would you have any problem if there was a time limit or a number of years put on this Conditional Use, like for 3 years?"

FANSLER "In three years it would go away?"

GAROFALO "It would be looked at again."

FRYE "You would have to reapply."

FANSLER "Reapply for a Conditional Use? Would this actually bring up the same situation that we have now? The protest petitions and having to go through the CPO meetings and everything? Go through this whole thing again?"

GAROFALO "As far as I know, yes."

FANSLER "Boy, I have been battling this for two years just to get this thing going. That is really tough. From what I see in the neighborhood, everybody keeps indicating about the outside storage and that nobody has a Conditional Use in that area for outside storage. But I would take any one of you up and down that street. I have been living in that area for 6 years. What is actually really going on in the area is not what is being presented. There is storage out there and people are putting things outside. It doesn't seem to disrupt anybody and I have heard no complaints in those 6 years."

To answer your question, at this time I would probably be opposed to that, but if you would elect to do that, I would have no choice."

GAROFALO "Are there any other questions? Thank you. Is there anyone else to speak in favor of this application? Is there anyone here to speak in opposition to the application? If not, I will bring it back to the Commission."

WARREN "Looking at this same thing that we looked at in May, at that time, I submitted that those things that are normally seemingly offensive, such as outside repair work, flashing, moving signs, off-site signs, commercial flags, pinwheels, loudspeakers, elevated platforms, etc., those are the things that I think people would maybe find offensive. He has agreed not to do any of these things. So I certainly haven't changed my mind about the approval of this."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The site has commercial developments located to the north, the south and to the northeast and southeast, which are zoned "LC" but are not permitted outside storage. Some of these uses are housed within residences converted to commercial or office use. An apartment complex is located across West Street from the application area on "LC" zoning. The site is located in the interior of the block. All the property west of the site is single family residential. The nearest outside auto display lots are 0.7 mile away. Extent to which removal of the restrictions will detrimentally affect nearby property: This general area is characterized by mostly small neighborhood retail uses and residential nearby. The outdoor storage involved with the vehicle and equipment rental business is not compatible with the uses

found in this general location. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan recommends auto related uses be located along CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses and utilities can support the uses. The application area is not along the CBD fringe, Kellogg, nor are any other similar uses found in the general vicinity. Therefore, this request does not correspond to the Comprehensive Plan. The approval of this request could possibly allow for additional vehicle sales operations to be located along West Street to the north or south of this site. The suitability of the subject property for the uses to which it has been restricted: The tenant is currently operating an indoor car sales business at this location. Other retail uses would also be appropriate at this location. Impact of the proposed development on community facilities: The use of this property should have limited impact on the community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. No more than 14 vehicles outside can be for sale on this sales lot at any one time.
2. This property shall be developed in accordance with the revised site plan that shows the required 6 parking spaces for employees and customers. The site plan shall also designate which spaces shall be used for customer and employee parking and which spaces will be for the display of vehicles. The required customer and employee parking shall not be used for any display of vehicles.
3. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
4. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be done on the premises without first obtaining "GC" General Commercial zoning.
6. Only those signs permitted in the "LC" zoning district shall be permitted on this site, except that no portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be used.
7. No sound projecting devices or loudspeakers shall be used on-site.
8. There shall be no use of elevated platforms for the display of vehicles.
9. The applicant shall comply with landscape street yard requirements and parking lot screening of any required parking spaces along West Street.
10. Any violation of the conditions of approval shall render the Conditional Use permit null and void.

WARREN moved, **MARNELL** seconded the motion.

MICHAELIS "Mr. Warren, I would like to ask if you would be inclined, I kind of like the idea of putting some kind of time limit on this so that it doesn't just stay there forever. Obviously, they are very well thought of in the area, but if somebody else comes in and that doesn't happen, and that continues to go, but I also understand that three years is reasonable because it takes a while to get all of this stuff going. I guess my thought would be a 10 year period and it would be something that you would agree to."

WARREN "Like you suggested, this is a big job. Going around gaining support, etc. I think this is a reasonable use of that land, subject to all of these conditions that we have put on it. I personally see nothing wrong with the sale of an automobile. I do see something wrong with some of the methods of selling them, but I think we have restricted it enough that it is a good use of the land. So I would prefer not to put that on there."

MCKAY "I have a question of staff. Can this Conditional Use coincide with ownership?"

KROUT "No. I will let Joe (Lang) respond to that. In fact, this question came up recently when you were discussing the halfway house on east Central when we had a particular user with a very good reputation and the same issue came up. The zoning goes with the land, including Conditional Uses."

MCKAY "Where I am coming from is that rather than put a time limit on this, if this person sells the property, then the change of ownership couldn't be reviewed?"

KROUT "No."

JOE LANG "We would discourage that type of action when making a decision on land use."

MCKAY "Okay."

MICHAELIS "I guess this is a point of clarification, then. If we issue this Conditional Use permit based on the conditions that are here, and then if somebody else comes along and doesn't abide by these, can that be revoked then?"

KROUT "Yes."

OSBORNE-HOWES "I will be voting against the motion. I think I did the first time, too. I really do see a distinction between outside storage of automobiles and just commercial. I was thinking about this yesterday as I was driving along on a rather busy street and was in the car with someone who was looking for an automobile. She said 'slow down, slow down, look we are going by a car dealership and I want to look at some of the cars on the lot'. So I did, and someone almost rear-ended me, even though I don't think I did it too abruptly. I got to thinking about that. You know, what we are really talking about is items that are offered for sale that are there for people to see when they drive by. That is a lot different than talking about a parking lot. I think it is more intensive. I don't think it is an appropriate use for that area. I think if anything, West Street is really trying to upgrade rather than to decline. I think that it is evident that while this person who is applying for this is a good solid business person, it rides with the land and not with the individual, so I will be voting against it."

PLATT "I was absent when this case first came before the Commission, and it seems to me that it falls in the category of a used car lot, and I don't think this is the proper place for auto sales. I think this is a marvelous example of what I would consider the bad problem with Conditional Uses. I think we can get into the habit of forgetting that they are designed to be rather rare exceptions and instead it seems to me that we are getting them all of the time. We are turning this piece of land into a used car lot and it seems to me that that is just asking to start running the whole area of West Street into used car lots. I for one am not going to support it."

GAROFALO "Is there any other discussion? I want to say that I will not support the motion either. As I recall, I voted in opposition to the previous one and I don't see a great deal of difference between this and the previous one. I don't think it is a good location north of Central on West Street to start putting in a bunch of car lots. I was struck by Mr. Duncan's comment that he would not have supported this one if the other one had gone in, and the fact that it does go with the land. I just don't think it is proper use of that area up there to start allowing all of these. So I will be voting against the motion."

Are there any other comments? If not, let's call for a vote."

VOTE ON THE MOTION: The motion carried with 6 votes in favor (Marnell, Warren, Carraher, Michaelis, Frye and McKay), and 5 in opposition (Lopez, Wheeler, Platt, Garofalo, Osborne-Howes). Fulp, Johnson and Hentzen were not present.

KROUT "One more step, on to the City Council, and we will notify you of that date."

4a. Case No. DP-138 Amendment #2 – YMCA of Wichita c/o Dennis Schoenbeck (Owner), Cellular One c/o Bill Ames and Baughman Company c/o Russ Ewy request an amendment to Parcel 5 of the Meridian Outlet Mall CUP to allow a communication tower as a permitted use; and

4b. Case No. Z-3324 – YMCA of Wichita c/o Dennis Schoenbeck (Owner) Cellular One c/o Bill Ames and Baughman Company c/o Russ Ewy request a zone change from "LC" Limited Commercial to "GC" General Commercial on property described as:

The South 85 feet of the west 85 feet of Lot 4, Block 1, YMCA South Addition, Wichita, Sedgwick County, Kansas; and

Lots 1-3 inclusive, Block 1 YMCA South Addition, Wichita, Sedgwick County, Kansas. Generally located north of I-235, approximately one-half mile west of Meridian.

DONNA GOLTRY, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant proposes to amend Parcel 5 of the Meridian Outlet Mall CUP (DP-138) to allow, as a permitted use, a 150 foot communication tower and to rezone 7,225 square feet from "LC" Limited Commercial to "GC" General Commercial. The application area is located north of I-235, approximately one-half mile west of Meridian, in the extreme southwestern corner of a larger tract, the Meridian Outlet Mall. The Meridian Outlet Mall is bordered by Meridian on the east, by a drainage channel extending from the end of Sheridan to I-235 on the west, by 33rd Street South on the north, and by I-235 on the south. The application area is adjacent to Parcel 4 which is currently being developed as the Wichita YMCA New South Branch.

The applicant has submitted a site plan, which shows two 12 by 20-foot buildings, each of which could be used by two separate carriers, and another 8 foot by 12 foot pad site for a third potential carrier. The 150-foot "monopole type" tower would be located in the northeastern portion of the site. A six-foot tall chain link fence with three strands of barbed wire is shown surrounding the tower and pad sites to enclose the area between the buildings and prevent unauthorized access to the site. A gate at the southeastern corner of the fenced area would allow authorized entrance to the site via open space to the YMCA parking lot approximately 1000 feet to the east. All development is located in the northeastern quadrant of the site in order to comply with the 35 foot setback required on the southern and western property lines by the CUP.

The site is Parcel 5 of the CUP, created by administrative adjustment May 9, 1999, from Parcel 4 of the CUP. This adjustment reduced the size of Parcel 4 from 57.90 acres to 57.73 acres and created Parcel 5 with 7,225 square feet and a maximum height of

35 feet, maximum coverage of 35 percent, and maximum gross floor area of 35 percent. Uses were limited to outdoor and indoor recreational uses, the same as previously allowed for Parcel 4. In order to allow the development of the communication tower, the applicant is now seeking an amendment to the CUP to allow "commercial communication tower" as a permitted use and a zoning change from "LC" to "GC" as required for communication towers. In addition, the applicant is seeking a variance to the compatibility setback requirements of 345 feet to 50 feet from the Board of Zoning Appeals on June 22 (BZA 17-99) to allow the tower to be 150 feet in height.

The Unified Zoning Code permits communication towers in the AGC® General Commercial and more intensive districts by right. However, the Zoning Code requires the applicant to provide the following information, in order to ensure that no more new towers are constructed than are absolutely necessary:

- (1) There is no available space on existing or approved towers or other structures, which can be utilized to meet the applicant's communication needs;
- (2) There is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;
- (3) The owner of the tower shall agree in writing at the time of the issuance of a building permit the following:
 - (a) That the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
 - (b) The owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

A copy of the applicant's statement addressing these items is attached to the staff report. This information has been submitted to an engineering consultant retained by the Planning Department. As of the preparation of this report, the comments have not been received from the consulting engineers.

The surrounding land use is a mix of institutional, quasi-institutional and transportation uses. As previously mentioned, Parcel 5 is carved out of the southwest corner of a 58 acre tract (Parcel 4 of Meridian Mall Outlet) that is being developed as the Wichita YMCA South Branch ("YMCA"). The YMCA is constructing a large indoor recreation facility on the center of the tract, accessed from a serpentine parkway connecting with Meridian. The site plan includes eventual development of eight soccer fields and 18 baseball/softball fields. To the west of the site, there is a drainage channel and a large open field owned by USD #259. Cleveland Traditional Magnet Elementary School is located on the northern portion of the tract. To the south of the site is I-235, but there is no direct access to the highway from the site. There are two large church properties located south of I-235 across from the site. The nearest residential areas are Southwest Village Fourth Addition beginning 900 feet northwest of the site and Southwest Village Third Addition beginning 1,200 feet north of the site.

CASE HISTORY: YMCA South Addition was platted July 7, 1998. The property was rezoned "LC" and approved as Meridian Outlet Mall Amendment #1 March 3, 1998.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" Wichita YMCA South Branch
SOUTH: "SF-6" Drainage ditch, I-235, church
EAST: "LC" Wichita YMCA South Branch
WEST: "SF-6" Drainage channel, open field, Cleveland Elementary School

PUBLIC SERVICES: This site has access across an open field to the YMCA's parking lot and from there, to Meridian. Traffic demand generated by the site would be minimal. Municipal water and sewer are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide identifies this area as appropriate for commercial development, medium and high density uses. However, the property was rezoned "LC" in 1998 as part of Amendment #1 to the CUP, effectively recommending commercial use for the entire Meridian Outlet Mall tract. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

The Transportation utilities locational guidelines in the Plan also recommend that utility facilities with significant noise, odor, and other nuisance elements should be located away from residential areas. Adopted policy in the treatment of communication towers is also established in the Zoning Code, regarding the need to document that no existing or approved towers or structures can meet the communication need, or an existing or approved tower or structure can be used, modified, or rebuilt before a new tower is permitted.

RECOMMENDATION: Staff feels that this is a potentially suitable site for a communication tower. The tower would be separated from residential uses by drainage channels, I-235, a school, a large open field, and the YMCA recreational fields. However, the consultant engineers have yet to determine that building this new tower, as opposed to locating on an existing tower in the vicinity, is

the only feasible option. In fact, the owner of a nearby tower is claiming that his site would be suitable. Therefore, staff recommends deferring this request until the consultant engineers have completed their evaluation. Should the MAPC vote to approve this request, we recommend the motion and findings as follows:

- A. APPROVE the rezoning from "LC" Limited Commercial to "GC" General Commercial.
- B. APPROVE the amendment to the Meridian Outlet Mall C.U.P. to allow a communication tower on Parcel 5, subject to the following conditions:
 - 1. The site shall be developed in general conformance with the approved site plan, with a six-foot tall chain link fence constructed around the perimeter of the site. The 85 foot by 85 foot area shall only be used for a communication tower and related equipment.
 - 2. All requirements of Section III.D.6.g of the Unified Zoning Code shall be met.
 - 3. The applicant shall file and receive approval for a variance request to reduce the compatibility setback requirement from 345 feet to 50 feet for a 150-foot tall communication tower.
 - 4. The tower shall be a monopole type tower and not exceed 150 feet in height and be in conformance with the site plan as approved and attached hereto.

This recommendation is based on the following findings:

- 1. The zoning uses and character of the neighborhood: There are large open spaces located on all sides of Parcel 4. The nearest buildings are the YMCA, a school, and a church. A drainage ditch is located just to the west and south of the application area. The closest residential development is approximately 900 feet northwest of the application area.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "LC" and is undeveloped. There is no "GC" General Commercial zoning in the area but because it is such a small area and the conditions placed on the request it is unlikely that there are any possible uses of this property, which would be unsuitable for the area.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The communication tower will not significantly increase trash, noise, or traffic in the area and therefore should not detrimentally affect nearby properties. The residential property to the north and northwest should not be significantly impacted due to the separation by other uses between the tower and the residences.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this area as appropriate for medium density residential use, however since the remaining portion of the area already is being developed as commercial (YMCA), it is unlikely any of the tract could be utilized for medium density residential.
- 5. Impact of the proposed development on community facilities: None identified.

MARNELL "Mr. Chair, I need to identify that I have a conflict of interest on this item, and will be abstaining."

GOLTRY "This is a cell tower case. Do we want to proceed with the staff report?"

KROUT "Joe may be able to help us with this. As you know, the City Council passed a moratorium, and that really prevents any actions on zoning related cases or issuance of building permits for any new towers. I think you are prohibited from taking any action today and for a period of almost six months."

We can open it up and see if there are any comments for the record that the applicant's agent would like to make."

JOE LANG, Law Department "The City Council's moratorium does include your action on this case. As you may be aware, there have been some discussions about modification of that language, but it has not occurred, and right now, the language of a moratorium would preclude your actions."

KROUT "You may want to ask the applicant if he would like this deferred for anything less than the 6 months that the moratorium calls for now, and maybe he would like that because he thinks the moratorium may be lifted all, or in part, in less time than that."

FRYE "Maybe we could say 'at such time that the moratorium is lifted'. That could be 6 months or less."

KROUT "You could make a motion like that. I think we will end up re-notifying the adjacent property owners, no matter when you schedule it, unless it is for a date certain. But that would be fine, too."

MCKAY "Wouldn't it be kind of silly to hear this, if we have a moratorium, sooner than the moratorium?"

KROUT "Yes. Is there anything that you want to add to this?"

GOLTRY "The CPO did not hear this because of the moratorium, so we do not have benefit of the CPO recommendation. It was our understanding that we are under a moratorium, so while we are prepared to discuss the case,....."

KROUT "The only thing I would say to you is that one of the issues related to this case is the fact that there is an existing tower on the adjacent property, Cleveland School, and in the spirit of the current policy and ordinance, which is to minimize the number of new towers, we were encouraging the applicant, as an alternative, to talk to the School District about modifying or rebuilding that tower instead of building a second tower along I-235 here.

The School Board, though, has taken a position that during the time that the City is doing this study, they are not going to enter into any agreements with property owners, so they are kind of at a stalemate to try to deal with that issue, unless the School Board changes its mind."

GAROFALO "But according to the story the other day, they indicated that they are going to look at the possibility of leasing space on their towers."

KROUT "I think it was left up in the air and they are going to get a report in a month."

GAROFALO "Yeah. They want to consider it apparently. That could change things. Russ."

RUSS EWY "I am with the Baughman Company, the agent for the applicant. I don't have any statements to make as far as the deferral goes, other than we would probably like something, and I called staff last week to maybe think about the language of how to word that deferral, in case, for whatever fortunate reasons, this study is completed in less than 6 months, we would be able to get on something like the next available Planning Commission date following the lifting of the moratorium, or something to that affect.

As a point of clarification, we have a moratorium, but is there a signed resolution, our client is curious to receive a copy of that resolution."

LANG "No. We just have the Council's action. A resolution has not been finalized as yet. That is the status. If the MAPC wanted to ignore the City Council and move ahead on this, that would be up to you."

GAROFALO "Okay. Let me just ask if there is anyone else in the audience who wants to speak to this case? If not, we will bring it back to the Commission."

FRYE "Mr. Chair, I am prepared to make a motion. Will this involve just item 4a., Marvin?"

KROUT "No, it would be 4a and 4b."

MOTION: That the items be deferred due to the fact that the City Council has declared a moratorium on the communication towers and that the Planning Commission hear this case as soon as possible following the lifting of the moratorium by the City Council.

FRYE moved, **MICHAELIS** seconded the motion, and it carried unanimously (10-0-1)
Marnell abstained.

Marnell left the meeting at 3:00 p.m.

5a. Case No. DP-244 – Dale and Norma Hecox Living Trust, and Bowen Brady (Owner); Aspen Wood Development, LLC, by Steve Claassen (contract purchaser); Austin Miller c/o Tim Austin (agent) request the approval of the Ashley Towne center Commercial community Unit Plan, and

5b. Z-3326 – Dale and Norma Hecox Living Trust, and Bowen Brady (owner); Aspen Wood Development, LLC, by Steve Claassen (contract purchaser); Austin Miller c/o Tim Austin (agent) request a zone change from "SF-20" Single-Family Residential; "B" Multi-Family' and "GO" General Office to "LC" Limited Commercial on property described as:

Lots 1,2,3,4,5,6,7 & 8, Ridge Plaza 5th Addition to Wichita, Sedgwick County, Kansas.

And

A tract of land described as follows: beginning 1,320 feet west of the northeast corner of the northeast Quarter of section 28, Township 27 South, Range 1 West; thence south a distance of 300 feet; thence west to the east line of Holland Lane; thence southeasterly along the east line of Holland Lane to the north line of University Avenue, a distance of 541.42 feet to the west line of a drainage dedication; thence northwesterly along the west line of said drainage dedication a distance of 832.45 feet to the north line of said northeast Quarter; thence west along the north line of said northeast Quarter a distance of 113 feet to the point of beginning, except the north 30 feet thereof taken for road right-of-way.

And

A tract of land described as follows: Beginning 1,320 feet west of the northeast corner of the northeast Quarter of section 28, Township 27 south, Range 1West; thence south, a distance of 300 feet; thence west to the east right-of-way of Holland Lane; thence northwesterly along the east right-of-way line of Holland Lane to the north line of said northeast Quarter; thence east along the north line of said northeast Quarter to the point of beginning; thence east along the north

line of said northeast Quarter to the point of beginning; except the north 30 feet thereof taken for road right-of-way. Generally located approximately 1,200 feet west of Ridge Road on the south side of Maple.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting approval of the Ashley Towne Centre Commercial Community Unit Plan as DP-244, and that the property be rezoned to "LC" Limited Commercial. The application area is a portion of the existing DP-37 Ridge Plaza C.U.P. Approval of this application would supercede the approved C.U.P. for DP-37 for the application area.

The proposed C.U.P. contains a gross area of 19.0 acres and a maximum building coverage of 248,364 square feet of gross floor area (30 percent maximum building coverage). The site is located near the intersection of Maple and Ridge, and is visible to traffic travelling along Kellogg. The applicant intends to capitalize on this visibility to create a new major planned retail center that would serve residents living on the western side of Wichita or travelling along Kellogg.

The C.U.P. contains four parcels. Parcel 1 occupies the western portion of the C.U.P. and is intended to accommodate a retail commercial center with up to eight buildings, connected together, most being 10,000 to 30,000 square feet in size. According to the developer's concepts, the buildings on the end of the center will be oriented to the east and the buildings in the middle will be turned on a 45° angle with facades that face southeast toward University Drive. This gives visual clues that University is to be a major entrance to the shopping center, and provides visual orientation toward the center for westbound Kellogg and northbound Ridge Road traffic. The turning of the buildings on an angle also screens loading areas from Maple and provides an interesting architectural element.

The remaining parcels are shown as three out-parcels located on the eastern portion of the application area. Parcel 2 is designed as a pad site with one building permitted. Parcel 3 is designed as a pad site also, but with a maximum of two buildings permitted. The developer has indicated both of these pad sites would be ideal for a restaurant or for financial institutions. Parcel 4 is proposed as a single pad site with a 30,000 square footage to be used in up to three buildings or, alternatively, as two pad sites. This gives some flexibility to the developer in tailoring the out-parcels to the needs of potential retail users for the sites.

Setbacks are shown at 35 feet on the C.U.P. Maximum height restrictions are set at 35 feet for Parcels 1-4; except that a portion of Parcel 1 would allow 30 percent of the gross floor area to be 40 feet in height in order to accommodate lofts and second stories in the retail center. This change should not enable an increase in the overall amount of retail floor area on the site. A revised site plan should change the parcel descriptions to include identification of gross area, maximum gross floor area, and floor area ratio, and the gross floor area should be the same as the square footage allowed for maximum building coverage.

A screening wall of six to eight feet in height, constructed of brick, stone, masonry, architectural tile or other similar material, is required along the western property line since it is adjacent to property zoned "SF-6" Single Family, and has been included in the revised C.U.P. plan.

The applicant has shown two openings onto Maple Street, a four-lane arterial. The eastern entrance aligns with Ashley Park. The western entrance is approximately 400 feet to the west. Both are considered major entrances and would necessitate right and left turn lanes on Maple. The applicant has agreed to provide right turn lanes into both of these entrances, and has agreed to construct a left turn lane from its current terminus east of the property along Maple to the western entrance to the development.

The applicant intends University to be the primary point of access for patrons northbound from Ridge and Kellogg. University is a local non-residential street and does not have access restrictions. Its name switches to Taft at a curve east of the application area, and has a signalized intersection with Ridge approximately half the distance between Kellogg and Maple. This signalized intersection would be the most direct entrance to Ashley Towne Centre for traffic northbound on Ridge from Kellogg. Currently, Taft/University is constructed with two wide lanes, but with sufficient width to add a third lane. The applicant has agreed to stripe University, and has designated complete access control except for four openings onto University.

The proposed internal circulation includes circulation drives connecting Maple with University. The internal circulation feeds both roads toward the middle of the tract, where a traffic circle serves as a traffic-calming device and allows easier crossing of the road by pedestrians. A network of pedestrian walks connects the retail center with the pad sites, with the main connection radiating from the traffic circle

Staff has allowed that one monument sign along Maple and one pole sign along University would be allowed for identification. The developer has represented in meetings with staff that no additional signs other than building signs were needed. Staff had requested that the language in General Provision 5 be revised to so reflect. However, the revisions provided by the applicant have maintained three additional items: (1) that sign height variances may be approve by the Board of Zoning Appeals, (2) that flashing signs are not allowed except for a date/time/temperature/public announcement type, and (3) that one monument sign be permitted on Parcels 2 and 3 and two on Parcel 4. While Staff has no objection to items (1) and (2), Staff feels that the addition of monument signs to each parcel would be out of character with the residential areas nearby. The revised C.U.P. included provisions for two directional signs on each parcel; however, it was recommended that only one be allowed on each parcel. It is requested that the General Provision #5 be revised accordingly.

The C.U.P. has been revised in enhance architectural controls, as requested in the previous staff report. The proposed changes on architectural controls and lighting may ensure a greater degree of coherence and reflect the preliminary design proposed by the applicant in its preliminary site plans. However, this language is not viewed as a substitute for submission of site plan and elevations presented in previous meetings with Staff and neighbors. The site plan and elevations give a graphic representation of

the level of detail and quality that was envisioned for this project and was a significant factor in its recommendation for approval. While it is not the intent of the Staff to expect absolute adherence to the site plan and elevation, it is important that the concept, as expressed visually and graphically, be followed in substantial conformance. Staff again requests the attachment of the site plan and elevations, as revised to reflect the shift from one primary entrance to two primary entrances along Maple.

Staff had requested that landscaping be provided on the rear of the pad sites adjacent to the drainage dedication. The applicant would like to utilize this view as a possible amenity for the pad sites. In line with this concept, it is suggested that landscaping equivalent to a landscaped street yard as defined in the Landscape Ordinance be provided. This provides more flexibility in placement of landscape materials and achieves the desired landscaping effect. The screening of any exterior mechanical equipment, trash receptacles, loading docks, etc. is provided for as a part of General Provision 13(D) in addition to the requested landscape street yard along the drainage channel.

The applicant is seeking all "LC" Limited Commercial uses except residential uses; day care; pawnshops; secondhand stores; taverns; night clubs; drinking establishments; adult entertainment; tattooing and body piercing; correctional placement residences, limited and general; group home, limited and general, and commercial; recycling collection stations, asphalt or concrete, limited; manufacturing, limited; mining or quarrying; oil or gas drilling; rock crushing; solid waste incinerator; and all industrial uses. At the MAPC meeting held July 15, 1999, the applicant agreed not to include fast food restaurants on all parcels. It is requested that this change be made to the Parcel Descriptions.

The surrounding land to the north across Maple is zoned "SF-6" Single-Family Residential, and is developed with Ashley Park Addition. A large residential tract fronting onto Maple is zoned "SF-6" and occupied by Brown's Botanicals. To the west are more single family residences. Mary Benton Elementary is located on the western property line of the C.U.P. and is zoned "SF-6." Ridge Plaza borders the tract to the south and is zoned "LC" Limited Commercial. There are a number of commercial/office uses in the area, including Typed Letter Corp., Pitney-Bowes, several office buildings, and a gymnastics facility. The eastern edge of the site is bordered by a drainage channel, with Lowe's being located between the drainage channel and Ridge Road.

CASE HISTORY: The application area comprises Parcels 23-27 of DP-37 Ridge Plaza C.U.P. Approval of this application will supercede the Ridge Plaza C.U.P. for these lots only. Parcels 25-27 were platted October 15, 1979 as Lots 1-8 of Ridge Plaza 5th Addition. The balance of the tract is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" Single family residences
SOUTH: "LC" Commercial, office use
EAST: "LC" Drainage channel, Lowe's
WEST: "SF-6" Elementary school

PUBLIC SERVICES: Municipal water and sewer service is available. The property has access to Maple, a four-lane arterial along the frontage with the proposed C.U.P., and five lanes at the intersection of Maple and Ridge with 1997 traffic volumes of approximately 16,300 average daily trips (ADTs) at Maple and Ridge. Taft/University Avenue, a non-residential local street, had a 1997 volume of 1,905 ADTs at the intersection with Ridge. The 2030 Transportation Plan projects traffic to increase to approximately 18,300 ADTs for Maple and Ridge. These 1997 volumes do not reflect the addition of Lowe's, an existing high volume traffic generator, nor the projected increase that would result if this C.U.P. were developed. Traffic could be anticipated to be significantly higher when this development is completed. No improvements are scheduled in the 2007 Capital Improvements Plan. Volumes are not projected for Taft/University since it is a local street.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area for future commercial, office and multi-family residential development, in conformance with the zoning pattern established by DP-37 Ridge Plaza C.U.P.

The commercial locational guidelines recommend that commercial uses be located in "planned centers" with site design features which limit noise, lighting, and other activities so as to not adversely impact surrounding residential areas. Also, the planned centers should be oriented to minimize traffic impact due to its location in relation to major traffic routes and the use of shared access points. The development of out parcels should be integrated in relation to planned retail centers through shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress.

RECOMMENDATION: The proposed C.U.P. for Ashley Towne Center conforms with Wichita's general guidelines for commercial development and offers a concept for a retail commercial center and out parcels that could form a desirable neighborhood shopping center in this area of Wichita. Therefore, based upon information available prior to the public hearings, planning staff recommends the following:

- A. APPROVE the zone change (SCZ-3326) to "LC" Limited Commercial, subject to platting of the entire property within one year.
- B. APPROVE the Community Unit Plan (DP-244), subject to the following conditions:
 1. General Provision #8(A) shall be clarified to state "Continuous left-turn lane on Maple to serve the two major entrances and connecting with the endpoint of the left turn lane to the east of subject property on Maple."
 2. The applicant is requested to show the location of drive openings onto University on the revised C.U.P.

3. A site plan and elevations shall be submitted in conjunction with the revised C.U.P. The revised C.U.P. shall include identification of gross area, maximum gross floor area, and floor area ratio in the parcel descriptions. Fast food restaurants shall be excluded from allowed uses.
4. General Provision #5(D) shall be removed and #5(G) should be revised to indicate that each parcel shall be permitted one directional sign of up 18 square feet off the internal circulation drive.
5. General Provision #16 shall be revised to state that a landscaping equivalent to a landscaped street yard per the Landscape Ordinance shall be provided along the drainage dedication.
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
8. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
9. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-244) includes special conditions for development on this property.
10. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding land is zoned "SF-6" Single Family to the north and west. There are single family residential subdivisions to the north. One commercial use is interspersed between subdivisions. An elementary school is located to the west. The surrounding land is zoned "LC" Limited Commercial to the east and south. The property is developed with retail to the east (Lowe's) and office/commercial park to the south. A large drainage channel separates Lowe's from the subject tract.
2. The suitability of the subject property for the uses to which it has been restricted: The tract is zoned for a combination of limited commercial on the east, general office on the northwest and southwest, and high-density multi-family between the office areas. The C.U.P. for these uses was developed in the 1970s. The areas zoned for office and multi-family have been platted for these uses since 1979. The property has been by-passed, with development occurring on all sides. The significant length of time that the property has been available for development but remained vacant tends to indicate the original development plan was not as suitable as an alternate plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Although development of the subject property with commercial uses would establish a dramatic change in the existing land use pattern of this area, the limitations included in the C.U.P., as recommended by staff, should mitigate most future impacts.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request, as recommended by staff, is in conformance with the commercial locational guidelines of the Comprehensive Plan. The bulk of the property is shown for commercial development on the Land Use Guide, making the majority of the application area in conformance with recommendations of the Land Use Guide.
5. Impact of the proposed development on community facilities: The greatest impact would be created by a significant increase in traffic along Maple. This would create additional traffic congestion along a street that already offers difficulties to adjacent landowners attempting to enter and exit their properties along Maple. It would also increase the congestion faced by those travelling to Mary Benton Elementary, which is already subject to congestion during school arrival and dismissal times, and during special events. The impact of this congestion can be mitigated by providing the proposed right turn lanes and "right-in", "right-out" access points, along with a continuous left turn lane to allow stacking of queued vehicles.

GOLTRY "We do have Jamsheed Mehta here today. He can speak with a lot more detail and clarity on transportation improvements, but I will say that we have come to an agreement on the portion of left-turn lanes that will be provided by the applicant, whereby the applicant has agreed to connect with the existing left-turns where they 'skinny' in on the west end of Lowe's and then continue them to the point of their second drive opening on the west. That would be the extent of the left-turn improvements. Also, they have agreed to provide right-turn decel lanes into both of their entrances along Maple Street and to stripe University for three lanes to allow for a left-turn lane to help facilitate traffic flow in that neighborhood.

One point that we have been working through is that of signage. Originally we had heard a proposal for one monument signage on Maple and one pole signage on University. I believe we have come to an agreement of one monument sign on Maple and one pole

sign along University. There are some sign issues that I have tried to highlight in the staff report where there were some differences between what staff has been requesting and what the applicant is willing to agree to. One thing is sign height variances approved by BZA. That can be done. It is to the point now, where you can have these come through the CUP amendment process instead, although I would say I don't think that is a major issue.

CPO Council 5 voted 7-0 to recommend approval of this. I will stand for questions."

FRYE "Just for clarification. You said they voted 7-0, but I thought in the minutes it indicated something about Councilmember Judy Park, who voted in opposition. How could it then be 7-0?"

GOLTRY "I am wondering...Judy Park voted in opposition on a case that we will be getting to later this afternoon. Is it possible that the blue sheets are out of...or am I looking at the wrong one? It says that she voted in opposition?"

FRYE "Yes. It's not a big deal, but it does say that."

GOLTRY "You are right."

FRYE "I am assuming it was 6-1. That is what I am going to go with."

GOLTRY "And I'm going to go with that when I send the greensheet on to the City Council."

OSBORNE-HOWES "How many openings on University were approved?"

GOLTRY "We have been presented with the notion that there were four. The CPO recommended one."

OSBORNE-HOWES "And did you say that you had come to an agreement?"

GOLTRY "Not on that particular point. We had, again, requested that they place the openings on University on the revised C.U.P. And they are probably are prepared to do so. That may be something that you want to speak to in terms of the number of openings along University."

PLATT "Continuing along with that, does that mean then that Traffic Engineering has not seen the proposed openings on University?"

GOLTRY "They saw a schematic diagram that showed basically four of them. They weren't staggered along, there was one on the western edge, one in the center from where Central came out on University, and then to serve the out parcel on Parcel No. 4. Truthfully, at this point, I would think three would be an adequate number of openings. I will let you discuss that."

PLATT "The reason I bring it up is that at the last Subdivision meeting, we were faced with a situation where the developers are now saying that if a Community Unit Plan is approved, that that means that the location and number of openings is no longer available for discussion at platting. So, I think we have to resolve the point and the questions of where Traffic Engineering brings in their recommendations, and whether or not we want to approve these at this point."

GAROFALO "Is there anyone here from Traffic Engineering?"

GOLTRY "We have Jamsheed here from Transportation."

GAROFALO "I mean the Traffic Engineer."

GOLTRY "No."

KROUT "We have an acting Traffic Engineer, and I think Jamsheed is familiar with this issue, if you have any questions. I think that the Traffic Engineer did not think it was necessary to place any limitations on access to University because it is only a collector street. Were there any discussions...I know Commissioner McKay, who left the meeting temporarily, had asked about dedicating the eastern drive as a street, and that that would provide some better local circulation and relieve some of the pressure on Woodchuck. Was that discussed with the applicant?"

GOLTRY "Yes, I believe they had discussions other than with me, and we had a brief discussion about it. I should probably let the applicant give his view on it, and my view, when we talked about it, was that they were not, at this point, wanting to look at a major reconsideration such as putting the platted street along the eastern edge. I will point out that the DP-37, which is the one that this C.U.P. supercedes, did have platted Holland Drive that ran through the middle of the property. So we are, by this DP action, vacating what would have been the only connecting street that is located between Ridge and Woodchuck. It would be supplanted, instead, by internal drives that are privately maintained and controlled."

GAROFALO "Are there any other questions of staff? Okay. Donna, I have one. On Page 6 on Condition 3, somewhere in the narrative, I think I read that it was suggested by staff that fast-food restaurants not be included or allowed on all of the pads. Here it says 'fast-food restaurants shall be excluded from allowed uses'. Is that correct?"

GOLTRY "It is my understanding that they had agreed to exclude fast-food restaurants from the entire development. That is just one of those minor language change that needs to be inserted on the revised CUP."

MICHAELIS "What is the definition of a fast-food restaurant?"

GOLTRY "I don't have my Zoning Ordinance. It talks about drive-through restaurants."

MICHAELIS "Previously, they said that on Parcel 2 that that would be suitable for a restaurant. I am wondering what the difference is."

GOLTRY "It is the drive-through portion of it that they are willing to exclude."

MICHAELIS "Would we be better served using the term 'no drive-through' instead of fast-food restaurants?"

GOLTRY "Yes. Actually, I would suggest that I would have been better served to have used the language straight out of the Zoning Ordinance that refers back to that."

GAROFALO "Are there any other questions of Donna? Okay. If not, we will hear from the applicant or agent."

TIM AUSTIN "I am with Austin-Miller, agent for the applicants. With me I have Dan Unruh, Curt Robertson and Steve Claassen, who can address any questions you might have of the developers. As Donna said, we are pretty much in agreement with staff at this point, except primarily with respect to items 2,3,4 and 5. I will cover those real quickly.

Item 2, I think we are in agreement with staff on as to the number of openings. We could go to 3 openings, and would suggest maybe 3 openings with a minimum separation of 250 feet between openings. We feel like we need some flexibility in terms of the overall site plan. Drive locations may be dependent on size of the building, circulation around that building and how the tenant may envision that.

To answer Commissioner Platt, Traffic Engineering was consulted on this site plan over a number of meetings, at least 4 meetings that I can remember, and didn't really indicate any general objections to the drives on University. I think the recommendation by the CPO kind of caught everybody by surprise in terms of the one opening. But as far as locations, the original concept showed 4 openings, and I don't think anybody had any problems with that. But if it would give somebody some comfort, we could go with 3 openings with a minimum separation of 250 feet. That is pretty normal within the traffic engineering guidelines.

With respect to Item 3, the drive-through restaurants, that was an error on my part and an oversight to get that in the language. We did indicate that that was an allowed use. The submission of a site plan with elevations, we have objected to that from Day 1. If you will note from the original CUP language to the CUP that is currently before you, we have really 'beefed up' the architectural language significantly. The language that you see there is language that is straight off of Bradley Fair and Wilson Farms. There are some pretty good reasons why we don't want to attach elevations in terms of architecture and over-all site plan. But if it would help and maybe to 'beef' that up a little bit, because I think the intent from talking with staff, a couple of things, we could add a provision, and I would suggest that we do this, add some language that states that 'the Community Unit Plan is intended to be a unified shopping center with singular control with respect to design standards that are established by the developer. Buildings on all parcels shall have similar architecture designs in accordance with the provisions contained herein and provide common access and circulation to achieve an integral site plan'.

The clients certainly want to develop a quality development on the west side similar to Bradley Fair. That is their target market, but many of the tenants drive a lot of that, as you know, once they line those tenants up. They kind of fear that if this is a requirement in terms of all CUPs, it really makes for an unlevel playing field. The property that is under development on the west side is very competitive and we see a lot of that in our business.

With respect to Item 4, the sign language. I just want to note that under the current Zoning Code, under the current standards, we would normally be allowed 1,188 square feet of signage, according to my calculations. What we are asking for is a total of 708 square feet. I had intended to get some additional language in there with respect to Parcels 2,3 and 4. I would like to add language that says 'no single tenant shall be allowed more than 50 square feet per sign and shall share the same sign monument. If you look on those parcels, like Parcels 2 and 3, they are allowed 2 buildings. We don't want to get into that situation like Comatara Power Center on North Rock Road where the first guy comes in and hogs out all of the signage and then you get the second tenant in and there is no signage available. Then somebody comes back to amend it. We think that would allow the flexibility and still keep the signage under that, which would normally be expected, or allowed.

With respect to Item 5, I was kind of surprised by that because Donna is correct. We have talked about that. If you look at the language under architectural controls, specifically with respect to Items 15 and 18d., it talks about incorporating screening and landscaping elements into those things, which are normally visually undesirable in terms of utilities and dumpsters and loading docks. We feel that that language in and of itself is sufficient. We see a potential that somebody might actually want to make that drainage dedication and integrate it into a design element within the site a feature, especially a sit-down restaurant or something of that nature.

With that, I would like to propose those changes to our language. I would be happy to answer any questions that anyone has."

KROUT "Will you explain again the number of signs you are asking for? The number of signs along the Maple front?"

AUSTIN "Along Maple, there would be the one Towne Centre sign, which was allowed for 150 square feet, and then Parcel 2 would have a monument sign that would be 100 square feet, but no single tenant would have more than 50 square feet. Parcel 3 would

have 100; Parcel 4 would have 100; and there would be the 150-foot Towne Centre sign that would be located in the very southeast part of the property. Then I added in the directional signs. One of the things is that we have asked for two directional signs because of the way we now envision the access potentially developed, that they would need maybe two per lot, especially with two buildings. So that includes three parcels of 36 square feet. That is how I got to the 708."

KROUT "But two signs along the frontage of Maple. One the Towne Centre sign and one the monument sign for Parcel 2? Is that right?"

AUSTIN "Right. If you feel like there needs to be a set-back on that sign from Maple, we could probably entertain that."

KROUT "Are you asking to put monument signs for Parcel 3 and Parcel 4 on the Maple frontage?"

AUSTIN "No. They would be contained within the parcel."

KROUT "So one monument sign of 150 square feet and one of 100 square feet?"

AUSTIN "Right."

KROUT "And so why are you asking for over 700 square feet?"

AUSTIN "The 708 square feet is the collective amount for all of those signs, based on the 80 per cent on arterial and 50 per cent on a collector, we could normally expect almost 1200 square feet, so we are about 60 per cent of what we normally would be allowed under the Sign Code."

KROUT "But the signs for Parcel 3 and 4 would be on those parcels?"

AUSTIN "They would be on Parcel 3 and 4. They would not be along Maple or University. Does there need to be language on that, Marvin? Do you think we should state that?"

KROUT "Yes. But we can work that out."

AUSTIN "We can certainly add that in there."

OSBORNE-HOWES "I notice from the CPO minutes that the Ashley Park Homeowner's Association thinks that this is going to be an up-scale development, and what you are saying is that you don't want to hold to that?"

AUSTIN "I don't think that is what we are saying at all."

OSBORNE-HOWES "Well, could you clarify that for me because you were saying that you wanted a lot of flexibility and didn't want to present drawings, etc."

AUSTIN "I will let Curt Robertson answer that."

CURT ROBERTSON "I am representing the developers. No, that is not what we are saying. I think what we are saying is that a lot of the tenants we are working with want some of their own architectural control, and that may dictate exactly what we build. That is why we put some architectural requirements into the CUP to make sure we abide by certain standards. Not to keep the standards up, but to give us some flexibility instead of doing, maybe like metal eaves, maybe we would want to do tile eaves. Things like that. That is where we want the flexibility. Maybe we would want to do all brick instead of a combination of brick and stucco."

If we attach a specific elevation, that doesn't give us the flexibility to do that. Those requirements are in the CUP that we only use certain materials, etc. Tim can probably give you more details on those."

MICHAELIS "I need to divulge that I have been contacted on this item, but a comment on the elevation aspect of it would be, and maybe this becomes the definition of what we are here to do. Are we here to architecturally design something or to approve it, based on the plans and the zoning requirements?"

Obviously, a center of this size is a major, major investment. These guys couldn't afford to do anything that wasn't architecturally appealing and something that was upscale and wasn't going to work. So I kind of hate to see us get into the designing process of it. It should be left up to the developer. I think they are a little better qualified to do that."

GAROFALO "Are there any other comments?"

AUSTIN "I just wanted to say something to Ms. Osborne-Howes. With respect to the Ashley Park people. We have met with them, as Curt said, two different times and they understand that it is a concept in terms of those architectural renderings. They understand that it is a concept and it can be changed. They have assured them that with the integration of the materials and architectural requirements that it will lead to a quality-type development."

GAROFALO "Tim, my concern here is probably more so with the traffic than anything else and the number of openings. I guess in all of this discussion, I have kind of gotten lost on how many openings we are talking about on Maple and how many openings we are talking about on University and where they would be. Could you review that for us?"

AUSTIN "Just on the openings or on the whole aspect of traffic?"

GAROFALO "Well, the whole aspect with the openings and the rest of it."

AUSTIN "Okay. The background information, just kind of history on the traffic improvements, was that right now, prior to Lowe's being in place, Maple, at the last count was 17,00 to 18,000 vehicles per day ADT on terms of traffic. There was some thought process, because of the increase to the base line level of traffic that we were generating to this, staff initially was initially looking at us, and you can see it vaguely here, but from about this point (indicating) extending the continuous left-turn all the way over here to Woodchuck. We kind of had some objections to it for a variety of reasons. One being the school district has about 587 feet of frontage, and Lowe's had about 420 lineal feet of frontage that we were having to guarantee and we just didn't feel, in fairness, that it should be our job to guarantee it, especially with the amount of commercial development that is to the south of this property, which would, again, add to a base-line flow. We are always agreeable to paying our fair share, but what is our fair share?"

But because of that difficulty, what we suggested of staff and which they agreed to was if staff would drop this 587 feet, we would extend it from where it tied to Lowe's to our west drive, which is at about this location. Basically, our frontage is 830 feet, and we would guarantee about 1200 feet of turn lane and go from 3 openings, which was what it was originally, down to 2 openings on Maple.

The openings on University were always shown to be 4 openings. When we first started looking at this, on concept, we had the 4 openings, and felt that we would need that, but I think with the way the circulation is now envisioned with the drive-way up here, and maybe coming somewhere down here like this, we would still need a center opening here and one for service back here and also over here. So, the way it stands now, it is 3 openings. Well, we have 4 openings, but we could live with 3 and maybe a separation requirement."

GAROFALO "Are there any other questions? Thanks, Tim. Is there anyone else to speak in favor of this application?"

ROD STEWART "I live at 5501 Coe Drive in Wichita. I am a Wichita Real Estate broker and property manager and I represent the 405 South Holiday LLC, which owns land across the street adjacent to this development. I also represent property owners in the Ridge Plaza Eighth Addition, who have vacant land in the notification area. I am here to state, for those people that they have absolutely no objection to this development whatsoever. As a matter of fact, we think it help us sell some of our vacant land and will certainly enhance our office building, and we wish them Godspeed and good luck. That is the official position of my three owners.

The official position of me is that I object vehemently to Section 3 under the staff recommendations. That is the section that talks about elevations and site plans being submitted and made part of this CUP revision. That is architectural controls any way you care to cut it. NO ONE else in Wichita has EVER had to do that at this stage of the process. Every meeting that has been held with Marvin Krout and the Association of Realtors, the homebuilders' and the development community has stood foursquare against architectural controls. Marvin's taste is wonderful, but it may not be mine or yours, or McDonald's, or K-Mart's, or Saks Fifth Avenue's. We do not want, nor do we expect Marvin to continue to try to insert his taste, and the taste of his department of finely trained professionals, into these real estate developments. And I would ask you to direct the Planning Director and his staff to cease and desist from further attempts at gaining architectural controls.

I am not prepared to ask you to censure him, but he knows fair well that any attempt to insert architectural controls is going to bring this kind of response from the development community, from the real estate community and pretty soon from the financial community. Thank you very much."

GAROFALO "Are there any questions of Mr. Stewart?"

STEWART "Does anybody question where I stand?" (Laughter here)

GAROFALO "Is there anyone else here to speak in favor of this? Is there anyone here to speak in opposition? Seeing none, we will bring this back to the Commission.

I need to know from staff, on these openings on University, the applicant is saying that they would be satisfied with 3 openings. What does staff say?"

KROUT "Three is fine. We didn't recommend any limitation to the number of openings on University because it isn't even a collector street, if I am correct. It is just a minor commercial street, which means, by the way, in terms of signs, you are actually varying the sign limitations along that minor street, which is only 50 square feet along the minor street for a sign. We don't have any objection to that because of the special nature of this area in relation to Kellogg. But we have never had any objection to having any number of openings on University because it is not an arterial street. Three openings is fine with us."

WARREN "Commissioner Frye brought up a point, and we have been running into this in subdivision that we approve it here on a CUP, but yet when it comes in on the final plat, Engineering comes up with something different. So I would hope that we maybe have that across that if we do approve a CUP like this, that it does correspond with those recommendations coming in from staff later. Like this last week, a CUP was approved, I think with 2 or 3 openings, and then staff came up and said they just wanted one, and the guy said 'hey, I've been approved already'."

GAROFALO "It seems to me like settling the number and then, isn't it during the platting where the locations are pretty well set?"

KROUT "Well, sometimes when you are dealing with a large scale development like a CUP, we think that this is the important time, the time that you are deciding how much square footage and what kind of use is appropriate, and you are dealing with a large parcel, that this is the right time to deal with at least the number and sometimes the location, depending on how well developed the surrounding area is. But sometimes I think you can leave some of the details to the platting stage, especially if it is a smaller tract."

OSBORNE-HOWES "I am kind of confused. The last speaker said No. 3 was real unusual. I don't think it is, is it? We have seen quite a lot of this."

KROUT "Do you want me to talk about aesthetic controls?"

OSBORNE-HOWES "You know, I really wish you would."

KROUT "No. 1, I am really disappointed that the Planning Commissioners feel the way they do, after hearing some statements at the meeting we had just recently with the City Council and the County Commission, and even Tim Witsman, the president of the Chamber of Commerce, probably thinking of Rod Stewart at the time, said 'not everyone may agree with me, but I think that one of the most important things that we ought to continue doing is approving the aesthetics of the community. So I hope that we are not taking a back step on that."

We have been consistently requiring, not elevations and site plans, necessarily, at this early stage, but we have been requiring something more than what these applicants are asking now, which is consistency of the materials between buildings, and then what we said was 'if you want to vary that, we will work with you on varying that administratively, but that is an assurance that there is some tied to the building. They are using all kinds of language in here, which is very hazy, vague and enforceable about similar and compatible and I don't think it is appropriate at all. What we are interested in is quality materials and architectural detail and this doesn't assure anything except we may get some consistently poor mediocre design out of this.

There was a statement made about it being an 'unlevel' playing field, and I think that we look at this side as being different than the typical corner of 6 acres or 12 acres or 14 acres to where we haven't asked for as much precision about it, because this is off of the corner. It probably means that they are getting the land cheaper and getting it rezoned than if they would have bought the corner. So they have more money, potentially, to be able to put into architectural features. Because they are in the middle of the mile and across from a quality residential neighborhood, I think it is appropriate to request them to take that extra step. They have also made that commitment to Ashley Park, and I know that I have talked to the them and maybe the Ashley Park neighbors understand that things changed and there needs to be some flexibility and we think we can provide that inner flexibility administratively like we have at Bradley Fair, which has much tighter controls than the one that has been proposed here.

But I think, also, in my discussions with the people at Ashley Park, they were presented a plan and they expected it to look something like that or to be of an equivalent quality. I think that we ought to be beyond the point we were 15 years ago of having architects flash pretty pictures and then doing what they want. I just have seen too many examples where leaving it up to the developer doesn't result in the product that everyone would like.

People have great intentions for their property like at Central and Maize, there were great intentions but they weren't ever put into the CUP, and then, several years later, when the property changed hands for various reasons, we have Star Lumber coming in front of us. I think you evaluate it and decide whether or not the market has changed and you have Star Lumber, but you have a process to be able to go through that change. I think the applicants here have made a commitment to the neighbors and they are expecting quality. I don't think the language that has been submitted assures that."

OSBORNE-HOWES "Just a comment back. It just seems to me that a few years ago, I can think of another west side case that there were lots of promises made and some statements put into the record that were rather hazy and I think the result was a disappointment. The agent may remember that. I guess that is one of the reasons, over time sitting here on the Commission as long as I have that we have attempted to, not so much dictate, as to up the standards.

Can I get a clarification? Marvin, is No. 3 what you are asking for, and is that in dispute?"

KROUT "No. 3 in the staff report, yes. And we would be glad to try to work with the applicant to maybe modify that to indicate that these would be illustrative of the general concept and can be modified by administrative adjustments if they are not specific changes. That is what we have done with Bradley Fair."

OSBORNE-HOWES "And others."

WARREN "Can we ask the applicant, are you opposed both to the site plan and the elevations, or just mostly the elevations?"

AUSTIN "Mostly the elevations. One point I would like to make, and that is that the language I wrote I took that straight from Bradley Fair. If it is ambiguous and vague and leads to bad development, then Bradley Fair is a bad development."

WARREN "But you are not opposed to presenting a site plan as a part of the CUP?"

AUSTIN "No. A general concept rendering we are not opposed to."

KROUT "Are you saying that you have taken it word by word from Bradley Fair?"

AUSTIN "Yeah. Well, I had to modify it a little bit, but most of those design elements. If it would please the board, you can go pull the Bradley Fair and look at it. There are very, very minor changes in it. Very minor."

KROUT "I know that we required specific materials, the same materials at Bradley Fair."

AUSTIN "On the newer CUP, like with Wilson Estates, it just came in where you had a precedent already set, yes you did, but the original underlying Bradley Fair, there wasn't."

KROUT "After the very first building, which was the Conoco station at the corner, I think that is when we had a conversation with the developer there and said 'this isn't really what you promised the community, and that is when we became, after that first building, we became much more specific, and so I think you are misleading the Planning Commission by pointing to that original CUP because it is has developed over the years with a different set of requirements. In fact, it was that service station with that original vague language that led to the changes."

AUSTIN "Well, I think it is ambiguous to tell them that it is vague and ambiguous. It is misleading in that context as well."

KROUT "Okay, Tim."

GAROFALO "So it is clear for me, and maybe some of the others. Tim, you were talking about Item No. 18 in the general provisions? Is that what you are referring to?"

AUSTIN "Yes, the architectural control."

GAROFALO "And Susan, you were referring to No. 3 in the conditions? That is what you were talking about, and you two were talking about No. 18."

KROUT "I think that Tim is saying that No. 18 ought to be sufficient, and I am saying that No. 18 is the original requirement that led to what I think was a real problem at the very corner that he, as a developer, now wishes he had back again. Since all of the development at Bradley Fair, since that one building, has occurred under different language than the one he submitted and referred to as the Bradley Fair language.

What we are saying is that if you are going to leave in the vague language that is specified in No. 18 that you ought to add to it what we suggest in No. 3 so that there is a yardstick to measure any changes from."

GAROFALO "So, if this was approved with Item No. 3 here, that would take care of it?"

KROUT "I think that would give us the tools to be able to then say that any changes to the site plan elevations that are submitted can be reviewed on a case-by-case basis."

GAROFALO "So that would, in a sense, supercede No. 18?"

KROUT "In No. 18, we talk about compatible or similar. That is not a enforceable standard, and we approve that every time we have had one of those we have had to deal with."

GAROFALO "I think that clears it up for me."

WARREN "I would like to hit on what Commissioner Michaelis was talking about earlier. What we do is take the base-line zoning and incorporate a CUP into it. Basically, we just do away with the conditions of the base-line zoning and we start drawing law as we see it. This is what scares these guys is what is in the unknown. It scares me, too. I like to be able to look at a law that is predictable, that is understandable, is interpretable and this thing of having a law that we decide here what is pretty and what isn't, is scary."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding land is zoned "SF-6" Single Family to the north and west. There are single family residential subdivisions to the north. One commercial use is interspersed between subdivisions. An elementary school is located to the west. The surrounding land is zoned "LC" Limited Commercial to the east and south. The property is developed with retail to the east (Lowe's) and office/commercial park to the south. A large drainage channel separates Lowe's from the subject tract. The suitability of the subject property for the uses to which it has been restricted: The tract is zoned for a combination of limited commercial on the east, general office on the northwest and southwest, and high-density multi-family between the office areas. The C.U.P. for these uses was developed in the 1970s. The areas zoned for office and multi-family have been platted for these uses since 1979. The property has been by-passed, with development occurring on all sides. The significant length of time that the property has been available for development but remained vacant tends to indicate the original development plan was not as suitable as an alternate plan. Extent to which removal of the restrictions will detrimentally affect nearby property: Although development of the subject property with commercial uses would establish a dramatic change in the existing land use pattern of this area, the limitations

included in the C.U.P., as recommended by staff, should mitigate most future impacts. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request, as recommended by staff, is in conformance with the commercial locational guidelines of the Comprehensive Plan. The bulk of the property is shown for commercial development on the Land Use Guide, making the majority of the application area in conformance with recommendations of the Land Use Guide. Impact of the proposed development on community facilities: The greatest impact would be created by a significant increase in traffic along Maple. This would create additional traffic congestion along a street that already offers difficulties to adjacent landowners attempting to enter and exit their properties along Maple. It would also increase the congestion faced by those travelling to Mary Benton Elementary, which is already subject to congestion during school arrival and dismissal times, and during special events. The impact of this congestion can be mitigated by providing the proposed right turn lanes and "right-in", "right-out" access points, along with a continuous left turn lane to allow stacking of queued vehicles.) I move that we recommend to the governing body that the request be approved as presented, subject to staff comments, except that in Item No. 3, elevations would be deleted from that requirement; that 3 openings be allowed on University, as has been discussed here, and that items such as No. 18 in their presentation be left in.

1. General Provision #8(A) shall be clarified to state "Continuous left-turn lane on Maple to serve the two major entrances and connecting with the endpoint of the left turn lane to the east of subject property on Maple."
2. Openings on University shall be limited to three openings with a minimum separation of 250 feet between openings.
3. A site plan shall be submitted in conjunction with the revised C.U.P. The revised C.U.P. shall include identification of gross area, maximum gross floor area, and floor area ratio in the parcel descriptions. Restaurants providing drive-up window service or in-vehicle food service shall be excluded from allowed uses in all parcels.
4. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
5. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
6. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
7. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-244) includes special conditions for development on this property.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

WARREN moved, **MICHAELIS** seconded the motion.

OSBORNE-HOWES "I will be voting against it, specifically because of the rationale presented by Mr. Warren. I also support the idea of laws that are enforceable as in knowing what you are getting into."

MICHAELIS "I think something that should be brought up is in this development case, and in any development case, you don't know, up front, what you are going to do until you take your idea and put it all together. That idea isn't completely formulated until you get your tenants and get everybody in there to know what the whole thing is going to be. You have to have some flexibility from the developer's standpoint.

If we sit here and say we want you to use all brick, and then, for example, they get all southwest tenants in there and they want to use all stucco. I don't think we can do it. I mean I don't think we should do it. I know that you can point to cases that have turned bad, and you can point to cases that are good, but you just have to, at some point in time, go with the developer as far as the concept. If the concept is there and we are talking about an up-scale area, and I really think it is, then I have to feel that it is going to retrieve that concept. It is hard for me to sit here and try to define what color that needs to be or what material it needs to be, what façade goes on it. I think that is getting beyond the planning part."

GAROFALO "Maybe I am crazy, or don't understand, but I don't see that here. Personally, I don't see anything here that says whatever site plan is presented wouldn't be agreed to."

MICHAELIS "That is what you are basically asking for with an elevation. You are asking for a concept drawing showing a particular thing. At this point, depending on what their tenants, I don't know if they are capable of doing that."

WARREN "I don't think they should. I think it is a precedent we don't want to set."

WHEELER "I don't recall us asking for elevations previously, Marvin. Correct me if I am wrong. We have not asked for elevations to be a part of the CUP have we?"

KROUT "Well, they haven't ever been presented to homeowners like they have in this case. They have been, in recent years, presented to homeowners as an illustration of what we intend to do. That is one difference. The other difference is that all of the CUPs up until now have said to use the same predominant material. That is the unifying feature. They haven't included that provision, which has been a standard provision of every CUP for at least the last 3 or 4 years. Then if someone comes in and says 'I have a different concept or a different tenant, and I need to modify it, but here is how I am going to use it as a trim material'. Or to use something different or similar, then, at least, the burden is for them to show that it is compatible because they are varying from that standard.

We have been flexible about it, and I think that there are some west side developments over by the Dillon's at 21st and Maize Road where that concept has been used and across the street from there where the brick has been used, sometimes as the major material, and sometimes as a trim material, but there is something that is unifying that development so that it is not just a collection of odd buildings, based on every individual's franchise architecture.

But the key is to use the word same and then delegate to your staff some administrative responsibilities for trying to make sure that the spirit is maintained if you are going to deviate from that, what this language of similar/compatible means nothing. It is not anything that either the staff can enforce or evaluate and we have seen someone come in and show us two buildings that are both ugly and different and say they are similar."

WARREN "Marvin, you keep referring, though, to setting precedents, and I understand what you are saying. I think we are setting a precedent here of saying that we are going to start asking for building elevations as conditions of zoning, and I don't think that is right. I don't know where you are going to cut it off and open it up. I don't know who is going to decide that here we are going to ask for elevations, and there we are not."

KROUT "I think if they had not shown those elevations and site plans to the Ashley Park neighbors, then you would have had 20 people down at this hearing at the CPO meeting and the MAPC meeting instead. I think if applicants are going out selling their wares that they ought to be held accountable for that."

WHEELER "To finish my train of thought, I am wondering if we could maybe adapt some of the terminology in No. 18 that would require unifying material and be typical of language that we used in other CUPs."

KROUT "At least use the term that we have used 'the same predominant exterior material'. And then, if and when that changes, we have something to say."

ROERTSON (From the audience) "We have no objection to that."

WARREN "That is what they are saying here."

WHEELER "Well, they are not saying 'same' and 'predominant'. They are saying 'similar' and 'compatible'."

FRYE "I think we are getting real picky on language here."

KROUT "My suggestion is that you leave the wording the way it is, but add to it 'and have the same predominant exterior'."

MICHAELIS "Are you guys okay with that?"

GAROFALO "I would prefer you would go up to the podium so we get it on the record."

AUSTIN "Yes, they agree with the language of saying 'predominant'. I think that language I mentioned earlier, which Marvin has a copy of, does that say that, what we had said. What I read off right at the start?"

KROUT "I don't know."

WARREN "Okay. Could I modify my motion? I will add that the language 'add the same predominant exterior material' be added at No. 18."

PLATT "Wait a minute, where are we adding this?"

KROUT "To No. 18."

WARREN "In the first sentence there."

KROUT "In the first part of it."

GAROFALO "Hold on a minute. Let's go over the motion again. It has been awhile."

MODIFIED MOTION: That we recommend to the governing body that the request be approved, subject to removing Item No. 3 of elevations, subject to making three

openings on University Street, and subject to all other staff comments, and that somewhere in this Community Unit Plan, preferably at about Item No. 18 that we would add the words 'same predominant exterior materials':

- A. APPROVE the zone change (SCZ-3326) to "LC" Limited Commercial, subject to platting of the entire property within one year.
- B. APPROVE the Community Unit Plan (DP-244), subject to the following conditions:
 - 1. General Provision #8(A) shall be clarified to state " Continuous left-turn lane on Maple to serve the two major entrances and connecting with the endpoint of the left turn lane to the east of subject property on Maple."
 - 2. Openings on University Avenue shall be limited to three openings with a minimum separation of 250 feet between openings.
 - 3. A site plan shall be submitted in conjunction with the revised C.U.P. General Provision #18 shall be revised to state that architectural controls shall adopt a unifying material and have the same predominant exterior material throughout the C.U.P. The revised C.U.P. shall include identification of gross area, maximum gross floor area, and floor area ratio in the parcel descriptions. Restaurants providing drive-up window service or in-vehicle food service shall be excluded from allowed uses in all parcels.
 - 4. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 - 5. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 - 6. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
 - 7. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-244) includes special conditions for development on this property.
 - 8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

WARREN moved, **MICHAELIS** seconded the motion.

KROUT "One more clarification on the motion. Does that include the addition of the monument signs that are requested for Parcels 2,3, and 4, and the square footage as requested?"

WARREN "I have forgotten the difference there."

KROUT "We are okay with that."

GAROFALO "Okay, if you are okay with that."

WHEELER "There was one other discussion under Item No. 3 that there be no drive-through. That the language would be changed to no drive-through, rather than fast-food. That was agreed to by staff and the applicant."

OSBORNE-HOWES "So clarification No. 3 is remaining in, except for the deletion of the words 'and elevation' and changing fast-food to drive-through?"

WARREN "Right."

KROUT "And adding the words 'same predominant materials'.

GAROFALO "Does everybody have that now?"

VOTE ON THE MOTION: The motion carried unanimously with 9 votes in favor.
There was no opposition.

- 6a. **Case No. DP-243** – Smith and Company c/o Ron Smith (Owner) and Municipal Engineers, P.A. c/o Barbar Khan, request the creation of the Smithmoor Commercial C.I.P., and
- 6b. **Case No. Z-3325** – Smith and Company c/o Ron Smith (Owner) and Municipal Engineers, P.A. c/o Barbar Khan, request a zone change from “SF-6” Single-family and “LC” Limited Commercial to “GO” General Office and “LC” Limited Commercial, on property described as:

Beginning at the Northeast corner of the Northeast Quarter of Section 33, Township 27 South, Range 2 East of the 6th Principal Meridian in Wichita, Sedgwick County, Kansas; thence bearing South 89 degrees 41’28” west along the north line of said northeast quarter, a distance of 1360.93 feet to a point which is the northeast corner of Smithmoor First Addition to Wichita, Sedgwick County, Kansas; thence bearing south 00’00” east, along the east line of said Smithmoor First Addition, a distance of 860.08’ feet; thence bearing north 89 degrees 41’28” east, a distance of 1360.96 feet to a point on the east line of said northeast Quarter; thence bearing north 00 degrees 01’25” east, a distance of 860.08 feet to the point of beginning, except road right-of-way for Harry and Greenwich. Generally located south of Harry and west of Greenwich.

KEITH GOOCH, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting to create DP-243 Smithmoor Commercial CUP and rezone the 23.8 acres from “SF-6” Single-family to “LC” Limited Commercial and “GO” General Office. This site is located at the southwest corner of Harry and Greenwich.

The applicant has submitted a drawing, which shows the 23.8 acres, divided into nine separate parcels. Parcel 1 (177,594 square feet) would be limited to all uses permitted in the “GO” General Office district. Parcel 2 (60,979 square feet), Parcel 3 (267,849 square feet), Parcel 4 (59,412 square feet), Parcel 5 (51,802 square feet), Parcel 6 (133,833 square feet), Parcel 7 (85,839 square feet), Parcel 8 (52,500 square feet) and Parcel 9 (52,500 square feet) would be limited to those uses in the “LC” Limited Commercial district, except for adult entertainment, taverns, drinking establishments and night clubs. All parcels would be limited to 30 percent floor area ratio.

The applicant is requesting one access opening to Harry from Parcel 1 and two additional openings to the commercial portion of the CUP, and all of these would be permitted full turning movements. The applicant is requesting two full openings to Greenwich. Staff has met with the applicant and agreed upon these access controls and the following traffic improvements: left turn lanes and decel/accel lanes to the major openings as shown on the CUP drawing as well as 12 and ½ percent of the cost of signalization at Harry and Greenwich.

As submitted by the applicant, the required masonry wall would not be constructed along the south line of Parcel 1, nor along the west property line of Parcel 1. The applicant has also requested that the entire wall not be constructed at the initial building permit, but as permits are issued for each parcel. Staff is recommending that the applicant construct a wall along the south property line of Parcel 1 and also construct the entire wall at the time of initial building permit. There is a public street and a hedgerow along the west property line of Parcel 1 which should provide sufficient screening and buffering of the residential properties to the east.

This request would permit Parcels 1, 2, 4, 5, and 7 to have one free standing monument type sign on Harry and Parcels 6, 7, 8, and 9 to have one free standing monument type sign on Greenwich. All signs would be required to be spaced 150 feet apart. The applicant has provided the now standard architectural control language.

There are single family homes located to the west of this property, zoned “SF-6.” South of the property is land developing with single-family homes, zoned “SF-6.” There is a construction storage facility and a single family home located to the north on property zoned “SF-6” and “LC.” East of the property are single family homes and a church, zoned “SF-6.”

CASE HISTORY: The applicant submitted a rezoning request and CUP request in 1995 for this property and property to the south, which was approved. However, he failed to plat and therefore the rezoning and CUP was never established.

ADJACENT ZONING AND LAND USE:

NORTH: “SF-20” and “LC” Construction storage yard and single family home
SOUTH: “SF-6” Platted for single family homes
EAST: “SF-6,” “SF-20” and “LC” Auto repair shop, church, and single family homes
WEST: “SF-6” Single-family homes

PUBLIC SERVICES: This site has access to Harry, a two-lane arterial with current traffic volumes of 9,803, and Greenwich, a two-lane arterial with current traffic volumes of 5,275. The 2030 Transportation Plan estimates these volumes will increase to 13,688 along Harry and 8,594 along Greenwich. Harry Street will be let shortly to construct a four-lane roadway from Webb to Greenwich. The City of Wichita “Capital Improvement Program” projects Greenwich will be expanded to four lanes between Kellogg and Harry in 2006. Municipal sewer and water are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area for commercial uses. The Plan recommends that commercial developments of this size should be located in “planned centers” versus extended strip developments. Such “centers” should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

RECOMMENDATION: This request does conform to the adopted Comprehensive Plan and most of the general provisions that the applicant has suggested do correspond to the most recently approved CUPs. However, staff is recommending a few minor changes.

Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

- A. Approve "GO" General Office for Parcel 1 and "LC" Limited Commercial for Parcels 2-9.
- B. Approve the creation of the Smithmoor Community Unit Plan (DP-243), subject to the following conditions:
 1. General provision 11, sentence three shall be revised to state, "The entire wall shall be constructed at the time a building permit is issued for any portion of the C.U.P."
 2. General provision 15 shall be revised to state, "No signs with rotating or flashing lights shall be permitted. No portable or off-site signs shall be permitted. Signage for Parcel 1 shall be as permitted in the "GO" General Office district. Signage for Parcels 2-9 shall be as permitted in the "LC" Limited Commercial district. All signs shall be monument type signs and spaced 150 feet apart. Monument type signs are defined as a detached sign where the width of the base of the sign is at least ½ the width of the widest part of the sign face, or where the base consists of 2 or more supports where the sign face is not more than two feet above the average grade of the ground. A monument sign shall harmonize with the architecture of the structure or complex it serves and be constructed of materials consistent with the same."
 3. The applicant may adjust the 90-foot ingress/egress easement to 60 feet and combine Parcels 4 and 5 into one parcel to allow for a larger buildable area.
 4. The exception list for Parcels 2 through 9 shall not include tattoo parlors because they are not permitted in the "LC" Limited Commercial district.
 5. At the time of platting, the applicant shall guarantee the following traffic improvements: right turn lanes for the access points on Harry and Greenwich, left turn lanes for all major access openings on Harry and Greenwich, and 12 and ½ percent of the signalization cost at the Harry and Greenwich intersections.
 6. A general provision shall be added which states that: the following uses are prohibited within 200 feet of residentially-zoned property: service stations, convenience stores with gas islands, restaurants with drive-in or drive-through facilities, and vehicle service or repair uses that have overhead doors facing those districts
 7. General provision 10 shall be revised to include loading docks and service areas. These areas shall be screened from Harry and Greenwich and the residential area to the west and south with screening walls and/or landscaping approved by the Planning Director.
 8. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
 9. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 10. Prior to publishing the ordinance establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-243) includes special conditions for development on this property.
 11. The applicant shall submit 4 revised copies of both CUPs to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There are single family homes located to the west across Smithmoor, zoned "SF-6." The property to the south is currently being developed with single family homes on property zoned "SF-6." A construction storage yard and a single family home is located to the north on property zoned "SF-6" and "LC." The property to the east is zoned "SF-6" "SF-20" and "LC." There are single family homes, church and an auto repair shop developed on this property.
2. The suitability of the subject property for the uses to which it has been restricted: This site is currently zoned "SF-6" and "LC." This property could be developed with a use that is permitted in either of these zoning districts.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: There are single-family homes and nonresidential properties located around this property. Through the use restrictions, screening, buffering, and landscaping established by the CUP, the surrounding properties should not be detrimentally impacted.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area for commercial uses. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.
5. Impact of the proposed development on community facilities: This development will increase traffic for both of these arterials. However, the required improvements should alleviate the potential impacts on these two roadways.

GOOCH "CPO 2 heard this request and voted to approve it 5-0, subject to the conditions in the staff report. Are there any questions staff?"

PLATT "I just wanted to ask you if Traffic Engineering has approved the traffic arrangements?"

GOOCH "Yes. We met with the applicant and the owner of the property approximately three times. We have agreed with all of those improvements that are shown on the CUP in the general provisions. There are 3 access openings to Harry and 2 to Greenwich. There are left turn lanes to those openings and decel lanes to the major openings, if I remember correctly."

WARREN "How many openings to Harry?"

GOOCH "Three."

WARREN "For all of these lots."

GOOCH "Yes, there is one to the general office portion, and then there is one that is the 90 foot ingress/egress, and then I think there is one that splits these two parcels that are right there. The other one will be a shared joint-access."

GAROFALO "Are there any other questions? I have one. One Page 2, where you are talking about the signs, in the second paragraph from the bottom. We are talking about one each, or one?"

GOOCH "They would be able to have one for each parcel; however they would have to meet the 150 foot separation requirement."

GAROFALO "So that would permit Parcels 1,2,4 ,5 and 7 to have one sign each?"

GOOCH "Correct."

GAROFALO "And the same for Parcels 6,7,8 and 9?"

GOOCH "Correct."

WARREN "Didn't I see something in there where you cut that 90 foot to 60 foot on those openings?"

GOOCH "If they want to. You mean the 90 foot ingress/egress that they have shown on there?"

WARREN "Both the one on Harry and on Greenwich?"

GOOCH "Yes. The one that goes around between Parcels 2 and 4; along the south line of Parcels 4 and 5, and the west line of Parcel 8, and out to Greenwich. They could cut that down to a 60."

MICHAELIS "Did you say you were going to combine Parcels 4 and 5?"

GOOCH "They can if they want to. It is not a requirement."

MICHAELIS "Okay. What happens to the sign if you do that?"

GOOCH "There would technically be one sign, but there is a possibility to adjust that. They would possibly have to go through an adjustment process with staff. I can't tell you at this time which."

GAROFALO "That seems like an awful lot of signs. Are there any other questions? Okay, we will hear from the applicant, then."

BABAR KAHN "I am here for the applicant. This development is done by Mr. Ron Smith, who owns the quarter section. He has done all of the residential development that you see to the west. He also owns the property to the south, so we have made a pretty good effort to meet with the staff several times and come to terms. Our client wants to do a first-class development here."

Basically we agree with all of the staff comments. We have been through them. We have talked with them several times and came to these conclusions, so we concur with the staff comments."

GAROFALO "Are there any questions of the applicant? Okay. Is there anyone else here to speak in favor of this?"

COLBY SANDLIAN "I represent the 50 acres immediately to the north of the property. We agree. We find nothing wrong with what he is doing. There is one thing that we do want to take into consideration. This is not the forum to do it, however. It should be in Subdivision, but I won't be here next Thursday to accomplish that.

We have a problem with surface water that is very severe. As this area was developed here, (indicating) it forced the water through this area. Through here. Consequently, in the last 15 years, it has gone up about triple in the amount of surface water. So I wonder, simply, if adding another, I think probably 15 acres or so, that might be under roof and asphalt, adding water that was going straight across the street. I would like to see some other methods of handling it.

I did meet with Mr. Smith. He showed me some things of the ability of the City, if they would allow him to cut right here so we could pick up some of that water and take it this direction. He would only have to cut through two feet into the ditch itself. But we do need to work with this surface water. It has to be contained or cut back in some way. Beyond that, I am very pleased with what he is doing, and I think it is a good thing for the neighborhood."

GAROFALO "Does anyone have any questions of Mr. Sandlian? Okay, thank you. Is there anyone else to speak in favor of this application? Is there anyone to speak in opposition to this application and would like to speak? Seeing none, I will bring it back to the Commission."

MOTION:

Having considered the factors as contained in Policy Statement No 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There are single family homes located to the west across Smithmoor, zoned "SF-6." The property to the south is currently being developed with single family homes on property zoned "SF-6." A construction storage yard and a single family home is located to the north on property zoned "SF-6" and "LC." The property to the east is zoned "SF-6" "SF-20" and "LC." There are single family homes, church and an auto repair shop developed on this property. The suitability of the subject property for the uses to which it has been restricted: This site is currently zoned "SF-6" and "LC." This property could be developed with a use that is permitted in either of these zoning districts. Extent to which removal of the restrictions will detrimentally affect nearby property: There are single-family homes and nonresidential properties located around this property. Through the use restrictions, screening, buffering, and landscaping established by the CUP, the surrounding properties should not be detrimentally impacted. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area for commercial uses. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. Impact of the proposed development on community facilities: This development will increase traffic for both of these arterials. However, the required improvements should alleviate the potential impacts on these two roadways.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The zoning, uses and character of the neighborhood: There are single family homes located to the west across Smithmoor, zoned "SF-6." The property to the south is currently being developed with single family homes on property zoned "SF-6." A construction storage yard and a single family home is located to the north on property zoned "SF-6" and "LC." The property to the east is zoned "SF-6" "SF-20" and "LC." There are single family homes, church and an auto repair shop developed on this property.
2. The suitability of the subject property for the uses to which it has been restricted: This site is currently zoned "SF-6" and "LC." This property could be developed with a use that is permitted in either of these zoning districts.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: There are single-family homes and nonresidential properties located around this property. Through the use restrictions, screening, buffering, and landscaping established by the CUP, the surrounding properties should not be detrimentally impacted.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area for commercial uses. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.
5. Impact of the proposed development on community facilities: This development will increase traffic for both of these arterials. However, the required improvements should alleviate the potential impacts on these two roadways.

WHEELER moved, **LOPEZ** seconded the motion, and it carried unanimously (9-0).

7. **Case No. CU-528** – James and Jean Spexarth (Owner); John Banner, Broadcast Tower Leasing (Lessee); Melissa Allen (Agent); and Savoy, Ruggles, and Bohm c/o Mark Savoy (Agent) request a Conditional Use to allow a communication tower on property described as:

That part of the SW ¼ of Sec. 10, Twp. 26-S, R-2-W of the 6th P.M., Sedgwick County, Kansas and being portions of the N ½ of the N1/2 of said SW1/4, the S1/2 of the N1/2 of said SW ¼ and the S1/2 of said SW1/4, described as beginning at the NW corner of said SW1/4; thence N 88°14'48"E, along the north line of said SW1/4, 1600.13 feet; thence S 01°45'12"E, 212.77 feet; thence N88°14'48"E, 123.00 feet; thence N75°22'28"E, 765.13 feet; thence S31°45'12"E, 30.00 feet; thence S28°14'48"W, 1621.79 feet; thence S88°14'48"W, 30.00 feet; thence N31°45'12"W, 1665.96 feet to a point 30.00 feet south of the north line of said SW1/4; thence S88°14'48"W, 810.51 feet to the west line of said SW1/4; thence N01°03'39"W, along the west line of said SW1/4, 30.00 feet to the place of beginning. Generally located north of 61st Street North and east of 167th Street West.

DALE MILLER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to allow a 1,162 foot tall communication tower on a 27.48 acre unplatted tract of land located north of 61st Street North and east of 167th Street North.

The applicant has submitted a site plan which shows the tower located approximately 1550 feet east of 167th Street West and served by an approximately 1700 foot long gravel drive. The tower would be supported with three guy wires located approximately 930 feet from the tower base. The site plan also shows a proposed 80-foot by 100-foot building with the possibility of expanding it by another 6400 square feet in the future. This building would house all of the equipment needed by the users of this tower as well as restrooms and community office space. The applicant has stated that this tower can potentially serve six FM radio broadcasters, 20 land-mobile radio providers, 20 paging providers, four cellular providers, and eight electronic newsgathering arrays. This tower will utilize a heavier and wider frame and stronger guy wires compared to other existing and planned towers in this vicinity. The applicant has stated that they plan to construct the tower in such a way that will allow it to be expanded to 1500 feet, if the rules for Class C FM radio stations are changed, as being proposed by the FCC (this would require application for an amendment to the Conditional Use).

The Unified Zoning Code permits communication towers in the "RR" Rural Residential district through a Conditional Use permit. However, the Zoning Code also requires the applicant to provide the following information before a building permit can be issued:

- (1) there is no available space on existing or approved towers or other structures, which can be utilized to meet the applicant's communication needs;
- (2) there is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;
- (3) the owner of the tower shall agree in writing at the time of the issuance of a building permit the following:
 - (a) that the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
 - (b) the owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

This request has not been reviewed by the consultant retained by staff for other tower requests, because at this point in time there is not an identified user. However, once one or more potential users have signed a contract to use this tower, the applicant will need to document the need for this tower, as has occurred in the nearby tower case recently heard by MAPC.

The property to the south and east is owned by the applicant and is zoned "RR" Rural Residential. Another communication tower is located just south of the application area. A request for a broadcast tower to be located northeast of this tower was heard and approved by both the MAPC (July 15th) and the Colwich Planning Commission (June 28th). There is undeveloped agricultural land located to the west and north of this property. The closest homes to the proposed tower are approximately 2,000 feet to the northwest and another home also 2,000 feet to the west. There are also homes to the north and northeast, which are over 3,000 feet from the tower location.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Undeveloped agricultural land
SOUTH: "RR" Agricultural land and a communication tower

EAST: "RR" Agricultural land and a proposed communication tower
WEST: "RR" Undeveloped agricultural land

PUBLIC SERVICES: This site has access to 61st Street North, a two-lane paved roadway with current traffic volume of 588. The 2020 Transportation Plan does not estimate the traffic volume for this stretch of roadway. Municipal sewer and water are not available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses.

The Transportation/Utilities Locational Guidelines of the Comprehensive Plan also recommends that utility facilities with significant noise, odor and other nuisance elements, should be located away from residential areas. Adopted policy in the treatment of communication towers is clearly established in the zoning code, which is stated in the background section.

RECOMMENDATION: The applicant has stated that this tower is designed to accommodate Federally mandated High Definition TV (HDTV) antennas. Planning staff is aware of possibly nine TV stations serving the Wichita market in the future (six existing). All of these stations will be required to provide HDTV and therefore will need a tower to locate their HDTV antenna. The addition of HDTV antennas to current TV station towers has required the relocation of some FM station antennas. Future utilization of existing towers for HDTV antennas will require additional relocation measures, thus the need for additional towers in the area.

The Federal government is also revising the Class C rules for FM radio stations, which will require FM radio station antennas to be located at a higher elevation than they are currently located, so as to avoid signal overlap. Based on these new rules and regulations, a single "bulky" tower in this vicinity, which will provide lease opportunities for multiple users, both TV and FM stations, is needed. A single "bulky" tower should reduce the number of towers to be constructed in order to meet the future demand, if rates are competitive. The applicant has stated that this tower will not be built unless at least one user has contracted to locate on the tower. Additionally, the zoning code would not permit a tower to be constructed without at least one user.

Staff is recommending approval of this tower: a) it is in the midst of an area already populated by tall towers: b) it is remote from any existing residences: c) there appears to be a need for one or more towers to accommodate future TV and radio station needs: and d) because other towers in the area are essentially full, as explained in our consultant's report for the Channel 33 broadcast tower.

Based upon the information available prior to the public hearing, staff recommends approval of the request, subject to the following conditions:

- A. The applicant shall plat the roadway and the area where the buildings will be located on.
- B. The tower shall be constructed in general conformance with the approved site plan, and shall be constructed in a manner consistent with the applicants' intention of providing space for the equivalent of: six FM radio broadcasters, 20 land-mobile radio providers, 20 paging providers, four cellular providers, and eight electronic news gathering arrays. The tower shall be no taller than 1162 feet tall.
- C. The tower shall be fenced with chain link fence, with a minimum height of 6 feet with an additional 3 strands of barbed wire extended above the chain link fence.
- D. The applicant shall meet with the County Fire Department prior to the issuance of a building permit, which will determine if any additional improvements are required to the roadway, which serves this tower and the proposed buildings.
- E. The applicant shall make any improvements required by the Fire Department, and meet all conditions of Section III-D.6.g of the Unified Zoning Code.
- F. This proposed broadcast tower shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this Conditional Use shall be considered null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is agricultural land located to the north and west of the application area. East of the application area is a single-family residence located near 151st Street West on the applicant's property. South of the site the applicant also owns property with an existing communication tower located on it. The proposed Channel 33 TV tower is located northeast of this tower. All of the property abutting this development is zoned "RR" Rural Residential. There are four towers located approximately 1 to 1.5 miles south of the application area.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently zoned "RR" which only permits a communication tower through a Conditional Use request in this zoning classification. The application area could continue to be used as agricultural land or other uses permitted in the "RR" Rural Residential district.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: There is agricultural land located around this property with an existing communication tower located south of the site and a proposed tower located to the northeast. The two homes, which are closest to this site, are owned by the applicant or the applicant's family. The closest homes, which are not owned by the applicant, are at a minimum of 2,000 feet west and northwest of the tower location. Therefore, it does not seem that this request will detrimentally affect nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses.
5. Impact of the proposed development on community facilities: This request will generate additional traffic in the area but should not be significant. Sedgwick County Code Enforcement has stated that no on-site services will be required.

MILLER "We are going to remove the platting requirement that would be Item A. Apparently we hadn't really thought through that in the sense of that if we require them to plat and they go try to get a tower permit, they will have to wait for the plat to be finished and we are not wanting to hold that up on that basis. And there is an 8,000 square foot equipment building that they are proposing to build with this, and when that goes in, then they will be required to plat anyway. So that should solve that problem. With that, I would be happy to answer any questions."

LOPEZ "Where are the two existing towers? Down here in the corner?"

MILLER (Indicating) "There is one right here that goes up this way, and another one approximately here, a mile south. And then somewhere over here is where another one is approved. West of the utility line, there is a high transmission electric line, and as you know, you required it to be located west of that."

GAROFALO "Are there any other questions of Dale? We will hear from the applicant."

GREG FERRIS "I represent the applicant, Broadcast Tower Leasing. Let me just take a quick moment to introduce John Banner. He is the project manager, and Melissa Allen is the consultant to Broadcast Tower Leasing. Mark Savoy is the engineer, and the landowner Jim Spexarth is also here, and they are all available if you have any questions as we go through this."

What we are proposing is a community broadcast tower. The tower will accommodate, as Mr. Miller said, several antennas and frankly will be constructed in a way that is much stronger than the average antenna. The antenna you normally see are built for one user but will accommodate two or three users. This tower, from the onset, is going to be built to accommodate multiple uses. This is coming as a result of the digital TV coming on-line, perhaps some new FM radio guidelines that are coming on. There appears, as you will remember from two weeks ago, to be a need from your consultant for these types of towers.

By approving a community broadcast tower, it will help reduce the proliferation of towers in the County. There may be other towers that are needed and requested, but there will not be a need for as many towers, because this will be available to go on that. This has been approved by staff, and it has unanimous approval of the Colwich Planning Commission, but at Colwich there were some issues raised and Broadcast Tower Leasing immediately tried to get to the heart of at least two of the primary issues. One was the road, and they do agree to relocate the road to the area which was in contention, and I think by the fact that they aren't here, that the owners that they didn't have a problem with the road, because they were satisfied that we immediately met their needs and concerns.

The other issue was ice from a guy wire. I think you heard this issue raised a couple of weeks ago. We are contacting the tower builder and they are in the process of evaluating all of the technologies that are involved in this. If there is something that does work, we will certainly want to be involved in that, because they build towers that are the most technologically improved towers, because they have to be. If you are going to go out and sell your tower to lease holders, they have to be the best tower, and they have to have the best access. That is what they intend to do. But most of the concern is from the KFDI tower, and the folks that live in that area. That tower, if you can't tell from the map, is far closer, in fact it is almost 300 feet from the roadway, whereas as Dale had mentioned, this is nearly 1500 feet from the roadway. Certainly, it will have less of an impact than the KFDI tower. We also have our tower further from any residential property than any other towers that have been proposed, and we believe that that is certainly a positive.

We agree with the staff recommendations, and we agree with the conditions, and we also agree with their analysis that this is a positive for the community and certainly can have an impact on reducing the number of towers that may be needed to be built as a result of the influx of digital and some of the FM regulations.

As I was here two weeks ago, we didn't oppose that tower and we will not be opposing any towers in the future. That is just not their style. Their style is to bring people to their tower, based on building the best possible tower and lease rates. It certainly, then, is the opportunity for other people to evaluate the needs that they have, based on those criteria. We certainly would be available for any questions, and if you have any technical questions, we have people here that can address those as well."

WHEELER "What was the arrangement, was there an agreement that you would move the access road so many feet south?"

FERRIS "Five hundred feet south of the property line, which seemed to be what the Colwich Planning Commission reached an agreement with the concerned folks on, and we certainly don't have any problem with that. Our property owner has agreed with that, and therefore it is certainly being accommodated."

OSBORNE-HOWES "Have you read this letter from KAKE TV?"

FERRIS "No. We haven't seen a copy of that."

KROUT "It was just faxed in. We will get you a copy of it."

FERRIS "We will be glad to address any of the issues if they have something that needs to be addressed."

OSBORNE-HOWES "They do. I don't know if I want to try to explain this though."

KROUT "I think we have a representative here."

FERRIS "We can address that at our time at the end."

GAROFALO "Are there any other questions of Mr. Ferris? Greg, in this Colwich decision, it mentioned something about in addition to the road, something about lights, using red lights instead of strobe lights."

FERRIS "There is not a problem with that. We agree with that. We will be mandated, basically by the Federal Aviation Administration (FAA) what types of lights to use, and as long as what we do is in compliance with them, we have no problem whatsoever with the recommendation that the lights be in compliance with the other towers. No problem at all."

GAROFALO "Are there any other questions of Mr. Ferris? Is there anyone else to speak in favor of this application? Is there anyone to speak in opposition?"

STEVE STARK "I am an attorney with Fleeson, Gooing, Coulson and Kitch, here representing KAKE TV, Channel 10. We faxed, over the noon hour, a position letter on behalf of KAKE TV. It was a three-page letter. Let me attempt to try and summarize it because it really isn't too terribly complicated, what our position is on this.

We have a concern, frankly, and that is that we want to be sure that the zoning policy and MAPC's handling of any speculative tower builder's applications for a zoning Conditional Use permit will be disposed of, addressed to whoever you all want to, but leaving maximum flexibility for KAKE TV, since KAKE is not yet sure how it wants to proceed to install digital TV. In other words, we have no position in support or opposition of BTL and its application if KAKE's digital TV tower needs and its choices in the future that it comes to a recent conclusion will not be impacted adversely at all by the decision today. If that is the result, KAKE has no position in support or opposition of the application today.

If, on the other hand, KAKE will be forced, because of the thought of reducing the number of towers in the area because of a perception that this application today is a community tower, and so anyone in the community in that area should go onto that tower, if KAKE will be forced to have to go onto the tower, to do business with BTL because of the application of the zoning policy, or if KAKE's application for the installation of its own digital TV tower at its owned location in this near vicinity would somehow be impacted in the future, or if KAKE, and perhaps some other local broadcasters would get together and design their own true community tower, if that proposal would somehow be adversely impacted by the disposition today, then in any of those events, KAKE's interests are seriously affected, then KAKE would have to take strong measures to protect its future broadcasting flexibility and its needs.

So, I hope that clarifies where the TV stations stands. I will be happy to answer any questions if you have any."

WARREN "Not being much of an authority on electronics or towers...we are talking about digital versus, I would say, a conventional type of a system. Do I understand that you can't put a digital on the tower you have now?"

STARK "Well, the engineers tell me that it is possible to put some digital on our existing tower. Our tower was built back in 1954, to the engineering standards that were applicable back then, so it is very old. It is one of only four or five of its kind in the Country, is my understanding. It would take substantial, significant construction costs to upgrade that existing facility to handle full power digital TV. We could perhaps do a side-mount of digital TV at low power for a transition period, but that is not a good long-term solution by any stretch of the imagination.

So we will likely be looking, down the road, we just can't tell how far that road is, how long it is from the time-frame, to have to install something else."

WARREN "It is not likely, then, that you would look into replacing your tower with a new tower at that location?"

STARK "It is entirely possible that the existing tower would go down if and when a new tower, fully equipped for digital TV, is installed, but there very well could be a transition period where one option is existing tower and a digital TV tower almost side by side. That could happen for a while.

KAKE, from an engineering standpoint, and technological standpoint simply has not completed its study of the FCC regulations, its own engineering needs, the operational aspects of digital TV to know what the best option is. Otherwise, we would probably be

here with something specific to present. We just don't know. Not yet. So we are hopeful that your decision today, from a zoning standpoint, will not, in any way, prejudice or limit KAKE's options in the future.

If there is any thought that because there are so many towers out there right now, that this is it, we will have serious problems with that. If that is the approach applied. We don't know. We are really here, just hopefully enlarging the thought process presenting our quandary, because we are not real sure exactly how we are going to approach this, and hoping that you will take that into consideration as you resolve this application."

WARREN "Where are your KAKE towers now?"

STARK "We have a number of towers throughout the state, but the tower in question here is just north of 53rd Street and just east of Colwich. I think it is 151st Street West. We are about a mile and a quarter to the southeast of the subject application site."

WHEELER "Does KAKE have a time frame for this? I am not sure what the deadline is, but I know there is a deadline for TV stations to become digital."

STARK "The FCC has mandated that local broadcasters like KAKE in this market have digital TV in place to serve the community by the year 2002. I am no authority on the FCC requirements, but I am led to think that there is also a transition period between the years 2002 to 2006 in which a television station such as KAKE might be able to broadcast both the analog, the existing signal that is put out and digital TV at a lower level, and satisfy the FCC. So we are looking at 2002 as a real date to have to have something done on digital TV. Whether it is going to be the complete package, so to speak, of digital TV, I think that is going to be under a broader transition period."

WHEELER "If I understand you correctly, you don't know if you oppose this or don't oppose this?"

STARK "Correct."

WHEELER "But you don't know for sure when you will be in a position to have a new tower?"

STARK "Correct."

GAROFALO "Are there any other questions?"

MICHAELIS "I think, as a point of clarification and follow-up, I think essentially you are asking us the same thing that Mr. Ferris asked us two weeks ago. Is that correct?"

STARK "I wasn't here two weeks ago. I'm not sure what Mr. Ferris asked."

MICHAELIS "Pretty much the same thing, I think. It was 'Don't rule me out.'"

STARK "That is not a bad summary."

GAROFALO "Are you pretty much saying that the option of leasing space on their tower or somebody else's tower, that KAKE would not do that?"

STARK "No. I am not saying that at all, sir. I am saying that it is premature for us to know whether that is the best technological cost effective long-term, best for our viewers. We don't know. We don't know whether the lease rates that they are asking for, the cost of helping them install the tower, is the best deal. What we are saying is please don't force us by any thought that there is a cap on any further applications for a communications tower to force us to have to do business with someone that perhaps we would not pick as our first alternative or first option."

GAROFALO "Are there any other questions? Okay, thank you. Is there anyone else who wants to speak in opposition to this application?"

BOB KAPLAN "I'm at 430 North Market. I want to take advantage of the opportunity for public comment only to memorialize the fact that issues, which arose subsequent to this Commission's approval of my client's application two weeks ago, have now been resolved. That being the case, with BTL representatives here and with the lessor and his counsel here, that being the case, I have no comment on their application. If that were not the case, then I would. I assume that we are in accommodation as to the location of the Turner tower."

GAROFALO "Is there anyone else who wants to speak in opposition?"

DON LINNEBUR "I live at 6550 North 151st Street West in Colwich. I represent a group of people around the area of the tower. I just want to say that the Colwich people surrounding there think it is real important that strobe lights not be used or if the FAA or FCC says they have to be used, well, I guess we will meet that when it comes. But we think it is important that they not be used. Thank you."

GAROFALO "Are there any questions? Is there anyone else to speak in opposition? If not, the applicant has two minutes for rebuttal."

FERRIS "Thank you, Mr. Chair. We have no problem, if you want to include, as part of your conditions, that unless the FAA requires other lighting, that red lights would be the ones we would use. We have no problem with that. That should address Mr. Linnebur's concern and we have no problem with that.

As far as Mr. Kaplan's concerns, BTL has always tried to accommodate this community as best they can. They have sat down and I believe they have reached an agreement with Mr. Kaplan and his individuals, so I don't believe that that is an issue.

I think Mr. Michaelis did almost exactly hit it on the head when, as I was listening to KAKE's presentation, I said that it sounded an awful lot like mine two weeks ago, where I said 'as long as you are evaluating towers on a case-by-case basis, we didn't feel that we need to be heard together'. I think that that has been the mood of the Planning Commission and that is to deal with cases on a case-by-case basis. I think that is your charge, and I think you do it well.

Obviously, my client would love to have KAKE on their tower. They have no desire to stop or hinder KAKE in any way, and frankly, your own zoning ordinance says that if KAKE cannot, because of the technology, because of their needs, they are exempt from having to go on our tower just because it is there. It is pretty clear that it has to be accommodated, and we have to go the mile. If that can't be reached, then they certainly have the options to do whatever they need to do, and if they can show you, at their time of application and from a technology standpoint, from a price standpoint, or from just the fact that they already have an existing tower, that they need to, they certainly have that option, and we certainly have no problem and do not want to stand in their way in any way, shape or form.

I hope, Ms. Osborne-Howes, that clarifies your question. If it didn't, I would be glad to answer that or any other question that you might have right now."

GAROFALO "Does anybody have any questions of Mr. Ferris? Okay. Thank you."

FERRIS "Thank you."

GAROFALO "Okay, we will take this back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There is agricultural land located to the north and west of the application area. East of the application area is a single-family residence located near 151st Street West on the applicant's property. South of the site the applicant also owns property with an existing communication tower located on it. The proposed Channel 33 TV tower is located northeast of this tower. All of the property abutting this development is zoned "RR" Rural Residential. There are four towers located approximately 1 to 1.5 miles south of the application area. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently zoned "RR" which only permits a communication tower through a Conditional Use request in this zoning classification. The application area could continue to be used as agricultural land or other uses permitted in the "RR" Rural Residential district. Extent to which removal of the restrictions will detrimentally affect nearby property: There is agricultural land located around this property with an existing communication tower located south of the site and a proposed tower located to the northeast. The two homes, which are closest to this site, are owned by the applicant or the applicant's family. The closest homes, which are not owned by the applicant, are at a minimum of 2,000 feet west and northwest of the tower location. Therefore, it does not seem that this request will detrimentally affect nearby property. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses. Impact of the proposed development on community facilities: This request will generate additional traffic in the area but should not be significant. Sedgwick County Code Enforcement has stated that no on-site services will be required.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The tower shall be constructed in general conformance with a revised site plan, which shows the road moved 500 feet south of the north line of the application area. The broadcast tower shall be constructed in a manner consistent with the applicants' intention of providing space for the equivalent of: six HDTV antennas, six FM radio broadcasters, 20 land-mobile radio providers; 20 paging providers, and eight electronic news gathering arrays. The tower shall be no taller than 1162 feet tall.
2. The tower shall be fenced with chainlink fence, with a minimum height of 6 feet with an additional 3 strands of barbed wire extended above the chain link fence.
3. The applicant shall meet with the Colwich Fire Department prior to the issuance of a building permit, which will determine if any additional improvements are required to the roadway, which serves this tower and the proposed buildings.

3. The applicant shall make any improvements required by the Fire Department, and meet all conditions of Section III-D.6.g of the Unified Zoning Code.
4. This proposed broadcast tower shall be in compliance with all conditions approved by the MAPC, and/or the Governing Body, as specified above, or this Conditional Use shall be considered null and void.

FRYE moved, **WARREN** seconded the motion.

KROUT "The Code already says that strobe lights are not permitted, so anyone wanting to do a strobe light would have to get a variance."

WHEELER "What about moving that drive 500 feet from the tower?"

FRYE "Yeah, that would include the Colwich Planning Commission's recommendations."

OSBORNE-HOWES "I am going to support the motion, but I do want to just mention that at some point I hope someone deals with the question of proliferation of towers because we are obviously going to be getting a lot more in the future and there are already a lot of tall towers out there. I am not saying that we should put a limit on them. That is not what I am saying, but I think it should be addressed."

KROUT "Just in response to that, we are interviewing Friday and Monday for a consultant and hope that we can arrange for the study to be on the City and County scope and the intent would be to involve stakeholders'."

OSBORNE-HOWES "I am just hoping we do this soon because I am sure we are going to start seeing lots and lots of tower requests coming very soon."

GAROFALO "Is there any other discussion? Okay."

VOTE ON THE MOTION: The motion carried with 9 votes in favor. There was no opposition.

KROUT "That is a final decision unless a property owner within the 1000 foot radius decides to file a protest in the next 14 days."

McKay returned to the meeting at 4:30 p.m.

8a. Case No. Z-3327 – Globe Properties, LLC, c/o Welsey A. and Paula L. Pechin (Owners) request a zone change from "SF-6" Single-Family Residential to "TF-3" Two-Family Residential; and

8b. Case No. CU-529 – Globe Properties, LLC, c/o Welsey A. and Paula L. Pechin (Owners) request a Conditional Use to allow multi-family development (triplex) on property described as:

Lot 57, except the east 139 feet and except the west 30 feet for the street, Park Vista Addition, Wichita, Sedgwick County, Kansas. Generally located north of 10th Street on the east side of Richmond.

LISA VERTS, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicants are requesting a zone change and Conditional Use to allow the construction of triplexes on vacant property currently zoned "SF-6" Single-Family Residential District, located north of 10th Street and west of Meridian on the east side of Richmond Street. The property consists of one half of one platted lot fronting on Richmond and is 66 feet wide and 126.56 feet deep, or 8,352 square feet.

The applicants are proposing to develop one building with three dwelling units. The site would have access to Richmond Street with parking provided on site. The site plan shows 3 parking spaces provided in the parking lot and each dwelling unit having a one-car garage, for a total of 6 parking spaces on-site. The number of parking spaces shown on the site plan are sufficient to meet the number of required spaces for a multi-family development (6). This site will be required to meet the requirements of the Landscape Ordinance.

The Unified Zoning Code permits multi-family projects in the "TF-3" Two-family Residential District if reviewed and approved by the Planning Commission in accordance with the procedures and standards for Conditional Uses. The Code establishes a minimum lot size of 3,000 square feet per dwelling unit for multi-family and duplex units, which is a maximum of 14.5 dwelling units per net acre. The Code also requires a minimum front setback of 25 feet and maximum height of 35 feet. The Landscape Ordinance requires a Multi-Family development to be separated from Single-Family Districts and Two-Family Districts by a 15-foot landscape buffer.

If these requests for a zone change and Conditional Use are approved, the Planning Director must also approve the applicants' request for an Administrative Adjustment to decrease the minimum lot size required by 10%.

CASE HISTORY: The application area was platted as Lot 57 of the Park Vista Addition on October 28, 1933.

ADJACENT ZONING AND LAND USE:

NORTH: "TF-3" – Triplex residences
SOUTH: "SF-6" – Vacant
EAST: "SF-6" – Single-family home
WEST: "SF-6" – Single-family home

PUBLIC SERVICES: Municipal water and sewer service is available to this site. Richmond Street, a local street, provides access to this site, but no traffic volumes are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this general area as low density residential and part of a "conservation" area. The low-density residential category of the Land Use Guide recommends 1 to 6 dwelling units per acre, however, this area has been developed with single-family homes, duplexes, and triplexes. At 12 dwelling units per acre, this development does not technically agree with the Comprehensive Plan recommendation, however, the plan does support increased development densities if compatible with the surrounding area and encourages the infill of vacant lots in older areas.

RECOMMENDATION: The intent of the Conditional Use provision is to consider well-designed multi-family projects in areas where duplexes are already permitted. Staff believes that this project would be suitable for this location, as four identical units are already built directly to the north. Specifically, we recommend that the elevation of the buildings facing Richmond Street be revised to add window openings and other design features so that there is some visual "surveillance" of the street by residents and it is more in character with existing structures along this street. This recommendation was included in the M.A.P.C.'s approval of the triplexes to the north. We also recommend additional landscaping in the front of each unit, between the garage bays. Based on information available prior to the public hearings, planning staff recommends the following:

- A. APPROVE the zone change (Z-3327) to "TF-3," subject to lot splitting the property prior to issuance of a building permit.
- B. APPROVE the Conditional Use (CU-529) to allow the construction of a triplex unit in the "TF-3" zoning district, subject to the following conditions:
 1. The site shall be developed in accordance with the site plan submitted by the applicant with the following changes:
 - a) The applicant shall submit a revised elevation drawing to the Planning Department for approval, prior to issuance of a building permit. The revised elevation shall show openings in the façade facing Richmond Street,
 - b) The applicant shall submit a landscape plan to the Planning Department for approval, prior to issuance of a building permit. This plan should show additional landscaping in the front of each unit between each garage bay.
 - c) The applicant shall develop this site as shown on these approved plans.
 2. Any violation of the conditions approved as part of this request shall render the Conditional Use null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding areas are developed with a mix of uses, including duplexes, triplexes, single-family residences and a church. The use and character of the site as proposed should blend into the residential uses of the neighborhood, with proper landscaping and the recommended design changes.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The use of this site for a triplex unit should not have a detrimental impact on the area. Triplexes, duplexes, and single-family homes surround the site.
3. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for low-density (1 to 6 units per acre) residential uses. This development does not agree with the Comprehensive Plan but is compatible with the single-family residences, duplexes, and triplexes located in the neighborhood, with proper landscaping and the recommended design changes.
4. Impact of the proposed development on community facilities: The proposed use should not generate significant additional traffic or have a negative impact on other community facilities in the area.

VERTS "As of last evening, the applicant was in agreement with these conditions, and CPO Council 6 voted 5-0 for approval. Are there any questions of staff?"

GAROFALO "No questions? Okay. We will hear from the applicant."

LYNN PECHIN "I live at 8601 Sharon Drive in Derby. I am 50% owner of the properties to the north that we have just built, and also on this lot. This is a vacant lot that has been vacant for a long time. I think the project that we did to the north has greatly improved the neighborhood and I see no reason why this lot wouldn't even further improve the neighborhood."

GAROFALO "Are you in agreement with the conditions that are set forth here?"

PECHIN "Yes. On the other units, we had to put windows on the street sides, which we did. There is no problem with that. The additional landscaping in between the garage areas, I think that is just more a matter of leaving out part of the asphalt that was at the front of the other units, and putting in a planning area there. It could only be used for shrubbery and things like that because I don't think trees could be planted in there."

GAROFALO "Okay. Are there any questions of the applicant? No questions?"

LOPEZ "Would this unit that is going to be constructed be similar to the one in the picture they showed us?"

PECHIN "Exactly the same."

GAROFALO "Are there any other questions? Thank you. Is there anyone else here to speak in support of this application? Is there anyone to speak in opposition? Seeing no one, I will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding areas are developed with a mix of uses, including duplexes, triplexes, single-family residences and a church. The use and character of the site as proposed should blend into the residential uses of the neighborhood, with proper landscaping and the recommended design changes. Extent to which removal of the restrictions will detrimentally affect nearby property: The use of this site for a triplex unit should not have a detrimental impact on the area. Triplexes, duplexes, and single-family homes surround the site. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for low-density (1 to 6 units per acre) residential uses. This development does not agree with the Comprehensive Plan but is compatible with the single-family residences, duplexes, and triplexes located in the neighborhood, with proper landscaping and the recommended design changes. Impact of the proposed development on community facilities: The proposed use should not generate significant additional traffic or have a negative impact on other community facilities in the area.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. APPROVE the zone change (Z-3327) to "TF-3," subject to lot splitting the property prior to issuance of a building permit.
- B. APPROVE the Conditional Use (CU-529) to allow the construction of a triplex unit in the "TF-3" zoning district, subject to the following conditions:
 1. The site shall be developed in accordance with the site plan submitted by the applicant with the following changes:
 - a) The applicant shall submit a revised elevation drawing to the Planning Department for approval, prior to issuance of a building permit. The revised elevation shall show openings in the façade facing Richmond Street.
 - b) The applicant shall submit a landscape plan to the Planning Department for approval, prior to issuance of a building permit. This plan should show additional landscaping in the front of each unit between each garage bay.
 - c) The applicant shall develop this site as shown on these approved plans.
 2. Any violation of the conditions approved as part of this request shall render the Conditional Use null and void.

FRYE moved, **CARRAHER** seconded the motion, and it carried unanimously (10-0).

9. **Case No. CU 530** – Coastal Refining and Marking, Inc. c/o Reed Copeland (Owner); Caster Excavating c/o Jeff Caster (Contract Purchaser); and Steve Stark (Agent), request a Conditional Use permit to allow a wrecking salvage yard operation, on property described as:

Lots 6 and 7, Block 1, North Industrial Park 4th Addition, Sedgwick County, Kansas. Generally located north of 21st Street North and west of New York.

KEITH GOOCH, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use permit to allow a wrecking salvage yard on a 12 acre platted tract of land located north of 21st Street North and west of New York Street. The Unified Zoning Code only permits salvage yard operations to be located in the "LI" Limited Industrial and "GI" General Industrial districts and are also required to obtain a Conditional Use permit.

The applicant's current business is located at 61st Street North and Woodlawn. The applicant has operated an excavating business at this location for some time. He recently added the salvage operation at the present location and was issued a citation by Sedgwick County Code Enforcement. In the opinion of the County Zoning Administrator, the salvage operation was not a legal land use. The applicant appealed this decision to the Sedgwick County Board of Zoning Appeals and was denied. The applicant subsequently filed an appeal of the BZA's action in District Court. If this request was approved to relocate his salvage yard operation to this site, the applicant has indicated that he would drop the existing lawsuit.

The applicant has stated that he buys metal from other demolition contractors and recyclers. He then shreds or shears this material and sells it to steel mills in Kansas City or Tulsa. There are 8-10 employees involved in the salvage operation at its current location. These individuals would move to this new location, if this request is approved.

The applicant has submitted a site plan, which shows this 12-acre site split into five different uses. Scrap and storage area is to be located just east of the access road from 21st Street North (vacated Cleveland Street), between existing Coastal storage tanks. A scale and office is to be located north of the western Coastal storage tanks, and just west of the proposed scrap/storage area to be located at the terminus of the vacated street. A proposed shredder is north of the scale and office area, and a shear is to be located just west of these two areas. A revised site plan will have to be submitted showing the exact location of the scale and office, employee and customer parking, and the proposed shredder and shear, if this request is approved.

The Unified Zoning Code requires one parking space per 250 square feet of office or retail sales area, plus per 2,000 square feet of building area used for warehousing of salvaged part; plus one per 43,560 square feet of outdoor storage area. Staff is unable to estimate the required number of parking spaces until the revised site plan is provided.

There is "GI" General Industrial zoning located to the north, east, west and south. The Coastal Refinery property is located to the south, east and west. There are railroad and industrial uses also located west of the property. North of the property is Safety Kleen, which is a toxic chemical disposal company.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH:	"GI"	Safety Kleen
SOUTH:	"GI"	Coastal Refinery
EAST:	"GI"	Coastal Refinery
WEST:	"GI"	Coastal Refinery, railroad and other industrial uses

PUBLIC SERVICES: This site has access to 21st Street North, a four-lane arterial with current traffic volumes of 13,623. The 2020 Transportation Plan estimates the volume on 21st Street will increase to 19,218. No improvements are scheduled in the City of Wichita "Capital Improvement Program" for this stretch of 21st Street North. Municipal water and sewer are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The City of Wichita "Land Use Guide" identifies this area as appropriate for industrial uses. The industrial locational guidelines of the Comprehensive Plan indicate that such uses should be located in close proximity to support services and provided good access to major arterials, belt highways, utility lines, along railroad spurs, near airports, and as extensions of existing industrial areas.

RECOMMENDATION: Based on the fact that this property is surrounded by similar heavy industrial uses and is screened from view from 21st Street North, it should have no significant impact on the surrounding property. Based on the information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. This Conditional Use shall authorize the operation of an iron, metal, and auto salvage yard. In no event shall the storage or baling of waste, scrap paper, rags or junk (excluding metal) be permitted.
- B. The salvage yard shall be in general conformance with a revised site plan, which indicates the location of the proposed office, scale, entrance, vehicle storage areas, customer and employee parking. The site shall be enclosed with a fence not less than eight feet in height and openings not in excess of five percent of the area of such fence. All access roads shall be paved with asphalt.
- C. The applicant shall guarantee the extension of municipal sewer and water to serve this site.
- D. The height of scrap metal piles and wrecked vehicle shall not exceed the height of the screening fence.
- E. Salvaged materials are to be piled and stored in an orderly manner such as would be provided by racks or bins. In order to reduce rodent potential, racks and bins shall be elevated so there is at least 18 inches between the bottom of the rack or bin and the ground. Racks or bins shall be a minimum of 48 inches away from any wall, fence, or other rack or bin. Non-rackable material shall be stored with an exposed perimeter or in a manner specified by the Health officer to prevent harborage and breeding.
- F. The applicant shall maintain at all times an active program for the eradication and control of rodents.

- G. Weeds shall be controlled within the salvage area and adjacent to and along the outside perimeter of the wall or fence.
- H. Entrance gates shall be provided with breakaway locking devices or other appropriate method to permit access by the Fire Department.
- I. Gasoline, solvents, oils and other automotive liquids shall be stored and managed and disposed of in a manner that minimizes potential for groundwater contamination, and complies with all applicable KDHE regulations pertaining hazardous materials and hazardous waste.
- J. Any on-site sewer system shall be used only for disposal of domestic sewage. No chemicals, solvents, and automotive wastes shall be disposed in the sewage facility. If solvents or hazardous wastes are generated or stored, they are to be managed in accordance with KDHE regulations.
- K. Any violation of conditions attached shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The general area is characterized by a number of heavy industrial uses, which have been in existence for some time. The proposed use is consistent with the properties located in the general area.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is currently limited to heavy industrial uses. Wrecking/salvage yards are permitted in this zoning classification with a Conditional Use. This site could be developed with a use (i.e. asphalt or concrete plant, freight terminal, outdoor storage, vehicle storage yard, warehousing, etc.) that is permitted "by-right" in this zoning classification.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Since the general area is already characterized by heavy industrial uses, the impact upon nearby properties should be minimal when considering the impact created by those uses currently operating in the area. For the most part the site is buffered from view by the Coastal refinery from 21st Street, and all materials will be screened.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: This site is in conformance with the land use guide and locational guidelines of the Wichita-Sedgwick County Comprehensive Plan which identifies this area as appropriate for industrial uses.
- 5. Impact of the proposed development on community facilities: None identified.

GOOCH "Are there any questions of staff?"

GAROFALO "Are there any questions? Keith, show me the access to that."

GOOCH "If you will just follow this little red line right here all the way down. That is vacated Cleveland Street, and that is their access. That is currently gated. If you were to drive by there, you couldn't get in. They will be required by Coastal, not through the Conditional Use, to gate along both sides of that vacated Cleveland street to ensure that the patrons of this facility do not inadvertently go into the Coastal Refinery. There has also been talk by the applicants that they will try to get another access opening off of New York Street. They would have to come back here and request a Conditional Use for a wrecking salvage operation on that part, too, for another access opening over there. That is in the future, not currently."

OSBORNE-HOWES "Did you say that there were going to ask for 30 feet of scrap metal and wrecked cars?"

GOOCH "That's 30 feet of height of storage from ground level. That is what they are going to request to allow their scrap metal to be stored."

GAROFALO "Okay. Are there any other questions? If not, we will hear from the applicant or agent."

STEVE STARK "I am an attorney with Fleeson, Gooing, Coulson and Kitch. I am here on behalf of Morris Caster and Jeff Caster. Before getting to the particular questions of the height and the fencing, as we do have a proposal there, and we want to explain that proposal. We want to give a little bit of background on this transaction.

We are excited, frankly, to be going into partnership, and I use the word 'partnership' in a loose sense of the word, with Coastal, for us to come in to the Coastal Refinery, and they are willing to lease us 12 acres for us to install our scrap metal facility. There is going to be a great deal of synergy there because, as you probably know, Coastal Refinery is more or less shut down. It is an abandoned facility, and there are plans by Derby to go ahead and take that facility down.

Obviously, there is going to be all kinds of metal that will be coming out of that refinery, and it needs to be processed. So Caster's scrap metal processing operation will be a wonderful fit to deal with those big old tanks that we saw pictures of and all of the other miscellaneous abandoned, rusting equipment that Coastal wanted to take down. We will be right there on their back door step to serve their needs. Obviously, we have existing customers. We have been developing the scrap metal at our current facility on north Woodlawn near Kechi for essentially 20 years. It is within the last 8 to 9 years that we have upgraded the technology to put in big shredders and conveyors and magnetic separation, any current processes that really is, we are getting in need of a larger location.

The atmosphere, frankly, has not been real conducive up there, with some growing residential people coming in next to the existing scrap metal facility, so we are looking for a more heavy industrial area where we are a better fit.

We do not process rubber or plastic, paper, or cloth. I know that was an item that was raised in the staff agenda. Frankly, we are not in that market. We don't have experience in processing those non-metal type of articles. We are a member of the Institute of Scrap Recycling Industries, Inc., or ISRI. I won't bore you with it, but I have all kinds of propaganda from that trade group about how wonderful metal recycling is for all of us. As you probably have already picked up, there really is quite a market there. This kind of operation is a wonderful benefit for the community, because as you probably know, and Mr. Lang, I think, could speak to this if called upon. The landfill does not allow white goods to go there, the old washer and dryers, refrigerators, but when someone's washer and dryer is on it's last legs and you have to get rid of it, where to do you with it? It used to be that someone would just drive off on some County road and dump it. Not any more. Just take it over to Caster's and Caster will grind it, shred it, and put it into salable stock for the processors and the fabricators to come pick up and reuse it, thereby saving the countryside of some aesthetic problems and minimizing the amount of landfill waste and overall energy used to process steel.

We are a very environmentally friendly industry and we work hand-in-hand with various counties. I have a letter here from Harvey County, attesting to how valuable Caster's metal scrapping business has been for them, since Harvey County, for the last few years, has sent all of their white goods to Caster to process, thereby saving a lot of space in their landfill.

This is going to be a turnkey move for Caster. Our entire metal scrapping operations on north Woodlawn will be physically moved to the new location, except for the building. We are going to have to build a new building at this location. But the heavy equipment, the shredders, the shears, and the scales will all be physically picked up and moved to this new location. If the MAPC will issue the Conditional Use, what we envision is KG&E will finish its electrical study of this area, complete the installation of the power that needs to go in, the dedicated transformers. We will then prepare the site with some land grading for the pads, move the heavy equipment on there, and then open up for business.

Now, getting to the issues raised earlier by Keith on the fence and the height. We would ask that the height of scrap, at any time, whether it is scrap waiting to be processed or processed scrap waiting to be picked up by fabricators, that height be subject to a maximum height limit measured from ground level, and not measured from a fence. What we would ask for is that that over-all height never exceed 30 feet. So if you were to put a long yardstick up in the air, you would never see a scrap pile at Caster ever going over 30 feet. Why 30 feet? Well, as I understand it, and Jeff Caster is here and can explain that in more detail, when a typical heavy truck comes in with metal scrap, and this could be crushed cars, washers and dryers, farm implements, whatever, a heavy truck, when it drops its load, the load comes up there somewhere between 20 to 30 feet. What we are trying to do, frankly, by having a little bit higher than a fence level, what we are trying to do is to minimize all of the labor involved, having to take those things off from that load and put them over here and end up with a whole bunch of different little piles. We would like to have a little flexibility on the height from ground level.

Now, in terms of a fence, staff is recommending an 8 foot high fence. Frankly, we have a couple of concerns. One is that the staff report says that the site shall be enclosed with a fence not less than 8 feet in height. We are asking for 12 acres to be rezoned, and, as Keith pointed out, 1,100 feet of vacated Cleveland. First of all, I heard Keith say, and maybe I misunderstood him, that the fencing of vacated Cleveland, the 1,100 feet is not something that staff is requiring, it is something that Coastal might require. Nevertheless, I am reading in the staff report as saying that the entire site is to be enclosed. We have included vacated Cleveland as part of the site. So, hopefully we don't have to fence, for the Conditional use purposes, the entire 1,100 feet of access. It is a private road; by the way, vacated Cleveland is a private road.

Then, if we are on the same page, we are talking about fencing, then, the actual operations. What Jeff Caster is telling me is that initially we are only going to lease about 3 to 4 acres from Coastal. We are going to kind of play it by ear, so to speak. We may very well not need all 12 acres for operation, yet if things go well, we will need to expand. But we are starting off with a smaller core area. So rather than fence the whole 12 acres, we are thinking, wouldn't it make some sense for us to just have to fence what we are actually utilizing? And if we expand by revising the site plan and submitting it again to Keith's office, then we would enlarge the fence, if you will. So that is a proposal that we would like to see.

But as we are understanding the fence requirement is that it is a screening issue. So what are we screening from? Who are we screening? My understanding is that we are screening is vehicles going 65 or 70 miles per hour along I-135. Perhaps if all we had to do is screen the exposure to the Canal Route, leaving the balance of the area to the applicant's good judgement as to whether to screen. Aren't we then accomplishing the staff's goal here of trying to provide some kind of aesthetic buffer for those casual passers-by going at 65 or 70 miles per hour.

So, if I were to summarize, can we have the height limitation be based on ground level up? We are asking for 30 feet. Fencing. Can we eliminate the fencing as a Conditional Use requirement, the access, and instead fence just our actual operations? And as to those actual operations, just those that present exposure to I-135, that would be our request. Mr. Caster would be happy to answer any more questions about the scrap business, if you have any."

GAROFALO "Are there any questions of Mr. Stark? Is there anyone else here to speak in favor of this application?"

KROUT "I have a question of the applicant. The request for materials up to 30 feet tall, is in the MAPC's authority to approve, but the request to eliminate part of the fencing, which does require a Board of Zoning Appeals Variance, it is not something the Planning Commission can do, is to eliminate part of the fencing requirement. I think we are going to interpret that the road is not part of the operation but I don't think that without a variance, you can eliminate the requirement to fence around the operation. Maybe the size of it can also be interpreted as expanding over time, along with the fencing.

But were your requests to eliminate part of the fencing and allow a 30 foot tall piles, were the CPO aware of them when they made their recommendations?"

STARK "Quite frankly, Marvin, I don't know what CPO's recommendation was."

KROUT "They recommended approval. There wasn't anybody there, so I guess that they didn't have this information."

GAROFALO "Is there anyone else here to speak in favor of this application? Is there anyone here to speak in opposition? If not, I will bring it back to the Commission."

OSBORNE-HOWES "I was just thinking, am I right that they are talking about 12 acres on which they could pile stuff up 30 feet high? Or maybe what they are saying is that they are going to start smaller and pile higher as opposed to using a bigger space and pile it lower."

STARK "I am sorry I didn't clarify that. The nature of this business is not a salvage dealer. The scrap that comes in is not there for someone to come by and say 'oh, I kind of like that discarded car'. What is stored there is really quite temporary. It is just there long enough to go through the processing. Frankly, that is part of the reason why we don't think we need the full 12 acres. We can get by with the 3 acres. We may need to expand a little bit if operations are big, but we are not really seeing the need for any large area for storage of the scrap processing because it comes in and goes through the system as quick as we can possibly get it through."

OSBORNE-HOWES "Is the storage part of it needing to be 30 feet high, or the scrap that comes from the recycling?"

STARK "I think it is the stuff coming in, let's just call that the scrap awaiting processing that we have the greatest need for the higher height. The processed scrap would be in bales and in piles of very small particles. Those don't need to be 30 feet in height."

KROUT "Why don't you come up to the podium, Mr. Caster, so we can have what you are saying on the record?"

JEFF CASTER "I live at 7676 Polo. Basically, these piles will be by the machine that processes the scrap. We want to concentrate the piles right next to the machine so that when we pick the material up with the crane and put it in the machine for processing, it is in a close proximity to the machine. If we had to scatter it out over those 12 acres, we would spend more time going out there, gathering it all up and constantly bringing it up to the machine, so if we have a sizeable pile right there by the machine, it is handy to pick it up, put it in the machine quickly and process it, and there are conveyors that take the processed material out and stack it up in a pile where it is awaiting trucks to come in. We load it up continually. That is constantly happening."

It is kind of like a sand plant. They pump the sand out of the ground and they have conveyors where they have a pile of sand coming off. This steel is basically like a pile of sand, only it is little, shredded nuggets of steel about the size of your fist that make a nice pile. We will have a pile like that; we will have a pile of the raw, unprocessed material in the form of smashed-up appliances, flattened car bodies that will be right by the shredder. I think you could agree with me that it makes sense to have that close by where you reach out, pick it up and put it in the machine. These few piles we have may take up maybe an area 100 x 100 or 100 x 200 feet on the 4 or 5 acres, whatever it is that we choose to use surrounding the machinery. But we would never have that whole 12 acres piled up with scrap 30 feet high."

KROUT "At your current operation out on Woodlawn, do you have 30 foot piles of materials there?"

CASTER "Probably higher in some areas. Usually we try to keep that stuff as close to the shredder as possible and keep it all together. Like our cranes only have like 50 feet of reach where they can set in one spot and pick up the material within their reach and go into the shredder with it. As trucks come in and dump it out, we take the crane and pile it back up on the pile so the crane doesn't have to move so much. We can get it in and through the shredder quickly that way. We have like one pile of unshredded material that takes up a space probably about 100 feet wide and about 200 feet long. Then on the other end of the shredder, we have a pile that is probably 20 feet tall and maybe 80 feet in diameter at the bottom where the shredded steel comes out."

Then, over at our shearer, which is another type of processing machinery, we have two piles about the same size, real close to the machine. Then we have to have space for the trucks and vehicles to come in and maneuver around to unload and dump off the material. But we like to have it in piles. It is more tidy that way, instead of having stuff strung out everywhere."

MCKAY "Are we going to use this site plan that is on the back that shows the storage off to one side, which is contradictory to what Mr. Caster was just saying. They show scrap storage in the northeast corner of the site, which is not very close to the shredder or the shearer. "

CASTER "That is kind of for the future, if we needed more space for some of those objects that we are going to be taking down from the refinery to haul back there to dismantle. Again, we will probably never need more space than that little triangular part where we have the shearer and the shredder, the scale, and the office, but those are two lots that are platted, and we decided to just go ahead and if we needed some extra space, once we get into that project to bring things out there and dismantle and break down before we put it, for instance, in the shearer. We might need an area to do so."

MCKAY "So, theoretically, this area on the right, this long, rectangular piece, could possibly be 30 feet high with storage, correct?"

CASTER "No."

MCKAY "I am just going by your design."

CASTER "We would probably have a pile in this area (indicating) that may be 30 feet high of unprocessed material. Then over here at the shredder location, we would have a pile of unshredded material that may be 30 feet high, and on the other end, a pile of processed material that probably will not ever be that high because we are constantly trucking it out as we get it in. But the supply of material coming in is often greater than that going out."

MCKAY "I understand, but where we are coming from is that in your drawing, you have 'scrap storage', and in the minds of us sitting here, you have that whole great big, huge area that you could go 30 feet high in. I would say that is probably 2/3 of the 12 acres. So on 8 acres, it could be 30 feet high. Isn't that where you are coming from, Susan? That is what they are trying to come up with an answer for. I have a couple of other questions, too."

CASTER "Okay, this would be the area that we would want the piles in."

MCKAY "You don't want them in the 'scrap storage' area?"

CASTER "No. I would never need to have anything piles that high there."

MCKAY "Okay. I have a couple of other questions. Did I understand the gentleman making the presentation that you are moving your total operation from the North Woodlawn site? The excavation and the whole shootin' match is going to go here, or are you going to leave the excavation up there?"

CASTER "The excavation will remain there. Just the entire scrap processing part will be moved."

MCKAY "Okay. In your stockpile up there presently, you have dug into the ground because of the contour of the land to store stuff, is that correct?"

CASTER "No. We haven't."

MCKAY "You haven't? I thought you had on the north side there, dug down some so that they wouldn't be very high."

CASTER "No, we have concrete poured on just the existing grade that was there where the equipment is and where the piles of material are. We have several ponds we have dug out there."

PLATT "How high are the storage tanks?"

CASTER "Fifty-five feet. And quite honestly, when I have been driving down I-135, I have tried to look in between those tanks and see where we would be located, and you really have to look and really have to know where in order to see back in there."

OSBORNE-HOWES "I assume there are federal regulations to deal with, like taking the oil or other things out of the old appliances, the extractions of some environmental hazards?"

CASTER "Yes. There are EPA (Environmental Protection Agency) regulations."

OSBORNE-HOWES "They regulate you on that."

MCKAY "And the time-table is what to do this, if this is approved? To get from one location to the other?"

CASTER "As soon as it would be approved, we hope to get started on doing the site, preparation to the proper elevations. As soon as we would get this permit and know we are going to get it, we want to get started."

MCKAY "So you are going to have the deal up north moved to this location within 60 days, 90 days?"

CASTER "I would say that it would probably all be moved within 90 days."

GAROFALO "I have a question. I just want to make it clear to me that you are in agreement with all of the conditions, except for the height factor and the fence?"

CASTER "The fence was just...the entire site has a fence around it and Coastal has security there 24 hours a day. With us taking down those structures and those tanks, we are going to need to get back there to our processing equipment to process it, and I just didn't see the need to have to put another fence in just around where we are going to be processing. We need to have access to move that material back there."

GAROFALO "Would you go to the map that shows where the fence is now. And is it a chain-link fence, or what kind of fence?"

CASTER "It is a chain-link fence. There is a fence that goes all along New York Street and across the end of Safety Clean's property and all around this perimeter. The entire site, everything that Coastal owns is fenced. And there is a security gate up here on 21st Street where they have their 24-hour security into the site. They don't want strangers just roaming around in there. They will maintain that fence as long as they own the property, from what I understand."

I just didn't see the need because there is a gate on vacated Cleveland and 21st that we will access, that will be opened and closed during our hours of operation. So I didn't see the need to just have another fence here where we are going to have our equipment. Nobody can access the site anyway unless they climbed over Coastal's fence that surrounds the entire perimeter of the property."

MCKAY "Jeff, is there a fence between the tanks there at the bottom, where it sales 'scale and office'?"

CASTER "No, sir. It is all open."

MCKAY "How about down the east side, coming along the street. The east side of the tanks?" The west side of Cleveland. Is there a fence there?"

CASTER "No fence. There are dikes around each one of these tanks that are probably 6 foot tall, but this is not fenced. But the perimeter of the property is completely fenced."

GAROFALO "But Coastal is going to want you to put something on Cleveland there?"

CASTER "On Cleveland, vacated Cleveland, there are, I think, 3 access points that go into the refinery. They asked me if I would put some type of barrier, whether it be some concrete blocks along with some gates, just something so that our traffic would not veer off into the refinery where they just turned in on vacated Cleveland and went straight back to our facility. Basically it is to keep people that may get lost from going into the refinery."

GAROFALO "So that could be a fence, too?"

CASTER "It could be a fence, it could be concrete blocks. He said it didn't have to be anything real elaborate, just something so that people don't get off of the road."

WARREN "This is more of a comment. I kind of agree that if that is all fenced for security, I don't see that additional fence out there is going to give this any more aesthetics, and I don't think it is going to accomplish any purpose. It looks to me like it is pretty well fenced."

CASTER "It is."

LOPEZ "I was just going to mention that a screening fence and a security fence are two different fences, for your information."

CASTER "Okay."

MICHAELIS "I was just going to comment on the same thing that Commissioner Warren did. I think that the reality of trying to screen this type of a project and property is probably not real, other than it is just pretty well screened now, just by the tanks. Everything else is there. I would think it would be more of a security issue, myself, and if that is already in place, I would be more inclined to just leave what is there."

WARREN "You would be looking down, wouldn't you, from I-135?"

OSBORNE-HOWES "Have we listened to public comment yet?"

GAROFALO "No."

OSBORNE-HOWES "We probably ought to do that before we start giving our opinions."

GAROFALO "I wanted to hear something from staff about this fence business, but we can get to that after while. Is there anyone else here to speak in favor of this application? Is there anyone to speak in opposition to this application? Seeing none, I will bring it back to the Commission. Marvin, if you will comment on the fencing, please."

KROUT "The Zoning Code, for many years, has said that you have to fence around the operation of salvage yards because those are among the most unsightly of uses in an urban area, and even in industrial districts, those uses have been typically screened from other industrial uses. We have had calls from people in industrial districts, telling us that these yards are eyesores and what can we do about them? Unfortunately, we have some that are non-conforming, and were established before that Code requirement was in place, and there isn't anything we can do about it unless they go out of business or they want to expand. So it is a zoning requirement.

I think you can interpret that the road doesn't have to be fenced, but anything less than the full enclosure of the operation is required to go to the City Board of Zoning Appeals. We don't have the authority to waive that screening requirement, except for permitting security fencing. Some day, if you want to visit that and say that that should be just a case-by-case situation and shouldn't be a Zoning Code requirement that can only be changed by variance, it is something that, the next time we go to the Zoning Code, that you can look at. But it has been there for a long time, and probably with good reason if you look around and look at some unscreened yards.

When we looked at this site, we said 'boy, if you were going to put a salvage yard somewhere, and we need to have salvage and recycling operations, what better location than this?' If it is partially screened by those tanks, and I assume they are going to stay up there, the tanks aren't coming down, although maybe some of the other steel is coming down in that area, it isn't right on either 21st

Street or 135th Street. If you drive on I-135, this is not the elevated section of I-135, but it would be great in this location. So if you can screen from just that ground-level view, it can be screened. This issue has never come up about screening, and it has been a typical requirement to require the materials to be screened from view.

I don't think we have a complete answer on what the site plan is, but I can tell you that I don't think the CPO has the full story when they saw it. I heard the expressions of concern from within this building about a use like this and what visible impact it is going to have. When I provided my own rebuttal, I said it was not going to be seen, and I am uncomfortable, at least without going out there on-site and looking at it very carefully and trying to nail down the site plan better, that I can still say that. So I think that if we don't resolve this issue, one way or another, either I am going to appeal an approval to the City Council, or the City Council is going to bring it to their own docket, to have a second look at it.

My suggestion is to defer this for two weeks and let us sit down with the applicant and try to define this site plan better. They may decide that they only want a Conditional Use for the western acreage right now. There may be ways to locate or even partially screen, with some type of netting, or something, for a limited area if we find out that there is some area that we think needs to be screened from view. I guess I feel like we need more time or else this isn't going to stop here."

WARREN "In addition to this fact-finding thing that I guess you are going to go through, assuming we get a delay on this, I would hope that we would have the City Council look and see if there is any way that we could go around that ordinance of screening. I don't know what we are going to screen from. We are going to be looking at this, still pretty much down. I don't see any cars that are going to be looking at this horizontally. We could make the guy do something, but I hate to see money spent that is of no value. So if there is any way we could circumvent that screening requirement, if we have that power, then I would like to see us do that."

GAROFALO "Joe (Lang), would you like to respond to that?"

JOE ALLEN LANG, Law Department "I will have to look at the Code and sit down with Marvin on that."

LOPEZ "If we defer this for a couple of weeks, will it have time to go back to the CPO, since they didn't have all of the information the first time? Would two weeks be sufficient?"

WARREN "Where are residents close by there, to the north?"

KROUT "There is no nearby residential."

GAROFALO "We would like to ask the applicant, on a deferral..."

STARK "Mr. Chairman, we are frankly very interested in moving forward on this, so a deferral would not be our preference. We appreciate the support about the screening, but quite frankly, what we don't want to do is get off on the wrong foot with staff, so specifically, what we would be willing to do, at this point, is to screen the operations, work with Marvin, and hopefully do just the area, that I believe is platted Lot 6, the smaller one where we plan on doing our operations. Lot 7, as Jeff has explained, is the larger one to the east. Maybe we can get by with just screening the most visible portions of Lot 6.

So, what we can do is arrive at an understanding that will be agreeable on screening and work out with staff the specifics of the screening, the area that we plan to actually use, as long as we don't have to put in a security fence around the entire 12 acres. I think that is workable. And with that, we would be willing to move forward."

MCKAY "What area are you talking about to screen? Can you show us on the map?"

STARK (Indicating) "Screening of this Lot 6."

MCKAY "That triangle piece there?"

STARK "Yes."

MCKAY "Okay."

MICHAELIS "A question I would like to ask Marvin. I am surprised that this hasn't come up yet. Is there a noise level requirement in this decibel-wise, and if so, does the equipment fall within that?"

KROUT "The City has a noise ordinance, and the noise ordinance is measured at the property line. It varies, depending on whether the property line is a property line that is zoned residential, or commercial, or industrial. The noise is allowed to be higher in an industrial area. The City Council just reviewed some changes to this ordinance in Old Town, which is actually zoned industrial, but has a mix now with the residential use. I don't know that anyone has taken any noise levels of their existing operations out there, but it is a standard measured in decibels, and it is different in the daytime than in the nighttime. It is normally enforced on a complaint basis; probably there aren't too many people near the Derby Refinery that are going to complain about the noise levels. As I said, I don't think we could find a site that would be better buffered from any residential areas in the City."

LOPEZ "In your proposal to screen, I guess it is Lot 6, in the future, in my understanding, you have no plans to use Lot 7, or, when you plan to use Lot 7, you will go ahead and screen Lot 7?"

STARK "It seems to me that the most reasonable way to approach our compromise here is to assume, and it probably should be verbalized, that, if, and to the extent that Lot 7 is utilized for these operations, that we would be required to go through screening, unless we were able to obtain a variance or other relief from that. I think that is the fair interpretation of our compromise. I believe we are willing to live with that."

KROUT "Are we still talking about having to deal with 30 foot piles and how we deal with those? We will have to try to work that out, is that the idea? Before you make a motion, I guess I would just say that if you make a motion to approve this subject to the staff finalizing the site plan and screening requirements, that is fine. If we end up not agreeing within the next two weeks, then I think we will place it on the City Council agenda and let them decide what to do with it."

WARREN "In order to get this across, and we have a lot on the agenda today, I am going to make a motion."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The general area is characterized by a number of heavy industrial uses, which have been in existence for some time. The proposed use is consistent with the properties located in the general area. The suitability of the subject property for the uses to which it has been restricted: The site is currently limited to heavy industrial uses. Wrecking/salvage yards are permitted in this zoning classification with a Conditional Use. This site could be developed with a use (i.e. asphalt or concrete plant, freight terminal, outdoor storage, vehicle storage yard, warehousing, etc.) that is permitted "by-right" in this zoning classification. Extent to which removal of the restrictions will detrimentally affect nearby property: Since the general area is already characterized by heavy industrial uses, the impact upon nearby properties should be minimal when considering the impact created by those uses currently operating in the area. For the most part the site is buffered from view by the Coastal refinery from 21st Street, and all materials will be screened. Conformance of the requested change to the adopted or recognized Comprehensive Plan: This site is in conformance with the land use guide and locational guidelines of the Wichita-Sedgwick County Comprehensive Plan which identifies this area as appropriate for industrial uses. Impact of the proposed development on community facilities: None identified.) I move that we recommend to the governing body that the request be approved, subject to staff comments, and the following:

1. We would provide for the piles to be no more than 30 foot high, and
2. That the screening fence, at this time, would be limited to what has been referred to as Lot 6; and that vacated Cleveland Street would not be required to be fenced.
3. If, in the event that the operation expands into Lot 7, then negotiations for additional screening fence would have to be satisfied.

WARREN moved, **MCKAY** seconded the motion.

OSBORNE-HOWES "Marvin, is there any way that we could insert into this motion something about you working with them on where or the height of some of these piles? Because I don't feel comfortable with 30 feet, but it sounds like they are going to need something over and above the 8 feet in certain areas."

KROUT "I wish there was. If there is not, then we will appeal this to the City Council and try to work it out with them somewhere between here and the City Council."

OSBORNE-HOWES "I understand that, but I mean is there anything we can put in our motion, because otherwise I will vote against it."

WARREN "Why? We have 55 foot tanks out there, and I can't imagine why this is offensive to you."

OSBORNE-HOWES "Just a moment. I understand about the tanks. I am not saying that I would not okay something, but this acreage all filled with 30 feet, which is what they could do now, I don't feel comfortable with."

MCKAY "As the second, may I say an amendment that would restrict the 30 feet to Lot 6 where the work is going to be going on, not Lot 7? Would that make you feel any better? It is going to be there, in and out, and 8 feet is ridiculous. If you take a truckload and dump it out, it is going to be more than 8 feet."

OSBORNE-HOWES "I am not disputing that. But there is a difference in 8 feet in all three, and that is all."

FRYE "I started with 25 feet with an 8 foot fence, but they wanted it increased. Was it not ever 25 feet?"

MCKAY "They want 30 feet from the ground up."

WARREN "I don't know how we could tell, driving down the Interstate, whether it is 25 or 30 feet."

FRYE "Well, you can't."

WARREN "I don't think you can, either."

OSBORNE-HOWES "So is Lot 6 what you are offering?"

MCKAY "I am just saying that 30 feet is just in reference to where the shredder, the shearer, and all of that stuff is."

OSBORNE-HOWES "I understand, but you talked about limiting it to.."

MCKAY "Thirty feet in Lot 6, which is the triangle lot on the left, which is all they are going to be doing. And screening and shielding."

WARREN "Well, that wouldn't isolate them putting metal on Lot 7, would it?"

MCKAY "No, but according to your motion, if they go to Lot 7, then they have to..."

WARREN "Do we want a lessor amount of feet on Lot 7, then?"

MCKAY "I thought your motion, the one I seconded was that it was for Lot 6 and when they went to Lot 7, then they would have to reapply."

WARREN "Let me ask the applicant a question before I modify the motion. If we were to allow some type of metal to be on Lot 7, could we limit that to 15 foot?"

CASTER (From the audience) "Yes."

AMENDED MOTION:

subject to the following:

I move that we recommend to the governing body that the request be approved,

1. This Conditional Use shall authorize the operation of an iron, metal, and auto salvage yard. In no event shall the storage or baling of waste, scrap paper, rags or junk (excluding metal) be permitted other than incidental storage and baling of some that may arrive with scrap metal.
2. The salvage yard shall be in general conformance with a revised site plan, which indicates the location of the proposed office, scale, entrance, vehicle storage areas, customer and employee parking. The site, which will be used by the applicant as an area to stockpile scrap metal parts and wrecked vehicles on Lot 6 and Lot 7, shall be enclosed with a fence not less than eight feet in height and openings not in excess of five percent of the area of such fence. The site plan shall also include "phasing" of any operations. All access roads shall be paved with asphalt.
3. The applicant shall guarantee the extension of municipal sewer and water to serve this site.
4. The height of scrap metal piles and wrecked vehicle shall not exceed 30 feet from ground level on Lot 6 and the west half of Lot 7, nor 15 feet on the east portion of Lot 7.
5. Salvaged materials are to be piled and stored in an orderly manner such as would be provided by racks or bins. In order to reduce rodent potential, racks and bins shall be elevated so there is at least 18 inches between the bottom of the rack or bin and the ground. Racks or bins shall be a minimum of 48 inches away from any wall, fence, or other rack or bin. Non-rackable material shall be stored with an exposed perimeter or in a manner specified by the Health officer to prevent harborage and breeding.
6. The applicant shall maintain at all times an active program for the eradication and control of rodents.
7. Weed shall be controlled within the salvage area and adjacent to and along the outside perimeter of the wall or fence.
8. Entrance gates shall be provided with breakaway locking devices or other appropriate method to permit access by the Fire Department.
9. Gasoline, solvents, oils and other automotive liquids shall be stored and managed and disposed of in a manner that minimizes potential for groundwater contamination, and complies with all applicable KDHE regulations pertaining hazardous materials and hazardous waste.
10. Any on-site sewer system shall be used only for disposal of domestic sewage. No chemicals, solvents, and automotive wastes shall be disposed in the sewage facility. If solvents or hazardous wastes are generated or stored, they are to be managed in accordance with KDHE regulations.
11. Any violation of conditions attached shall declare the Conditional Use null and void.

WARREN moved, **MCKAY** seconded the motion.

GAROFALO "Okay. Does everybody understand the motion?"

VOTE ON THE MOTION: The motion carried with 9 votes in favor (Warren, McKay, Lopez, Garofalo, Michaelis, Frye, Platt, Carraher, and Wheeler) and 1 in opposition (Osborne-Howes).

FRYE "Mr. Chair, I have a question of staff. It is my understanding that based upon the passage of this motion, that you will appeal this? Is that what you are saying? I would just like to be put on notice. This hasn't happened very often."

KROUT "Right. And I will use that period of time before it gets to the City Council to work with the applicants and see if we can work out something."

MCKAY "I guess I have a question. Why? You sat there and said that this was the most perfect location that there could possibly be, we are talking about infilling the City, and then you throwing all kinds of rules and regulations at them, and there is nobody that lives within a quarter of a mile of that, maybe even half a mile, that could come closer now within 200 feet of residential. I just have a real problem with the analogy."

10. Case No. Z-3328 – John J. Cammon (Owner); Robert W. Kaplan (Agent) request zone change from "B" Multi-Family Residential and "SF-6" Single-Family Residential to "LC" Limited Commercial on property described as:

Lot 1, Block 24 and 30 feet of Academy Avenue now vacated, adjoining said Lot on the North, Parkwilde Addition to the City of Wichita, Sedgwick County, Kansas. Generally located approximately 500 feet north of Douglas, west of West Street (131 North West Street).

LISA VERTS, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "B" Multi-Family and "SF-6" Single-Family Residential Districts to the "LC" Limited Commercial District for the 1.03 acre platted Lot 1, Block 24, Parkwilde Addition, located between Douglas Avenue and 2nd Street on the west side of West Street. The northern edge of this property includes 30 feet of previously vacated Academy Avenue (First Street). The lot is currently vacant and has 150 feet of frontage along West Street. The applicant, and owner of S & D Equipment Company two lots to the north, requests the rezone in order to expand his existing business to accommodate lawn-mower repair, sales, and service.

The subject property is bordered by Taylor-Made Transmissions on the north, a dentist's office across West Street on the east, vacant multi- and single-family zoned land on the south, and a single-family home that fronts onto Florence on the west. The surrounding zoning and land uses are predominantly commercial to the north and east and there is strong commercialization along West Street between Douglas and Central.

CASE HISTORY: The subject property was platted as part of the Parkwilde Addition on March 4, 1887. First Street, previously Academy Avenue, which is the northern boundary of the property, is vacated between West Street and Tracy Street. The southern thirty (30) feet of that vacated right-of-way is included in this rezone application.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" and "SF-6" – Transmission Repair Shop
SOUTH: "SF-6" and "B" – Vacant
EAST: "B" – Dentist Office
WEST: "SF-6" – Single-family home

PUBLIC SERVICES: Municipal water and sewer service is available to serve this site. The property has access to West Street, a 4-lane arterial with 30 feet of existing half-street right-of-way. When this site is replatted, an additional 20 feet of right-of-way will be required. Access to this site shall be restricted to the current access driveway existing on the lot directly to the north or by a new joint driveway. A cross-lot circulation plan will be required at the time of re-platting. Existing (1997) traffic volumes along West Street south of 2nd Street and north of Douglas Avenue are 22,600 average daily trips (ADT) and is projected to increase to nearly 25,100 ADT by the 2030 Transportation Plan.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies strip commercial uses along West Street between Maple and Central Avenue. The commercial locational guidelines of the Comprehensive Plan recommend that commercial uses should be located in compact clusters versus extended strip developments, except for areas and streets where these uses already exist or where traffic patterns, surrounding land uses, and utilities can support such uses. The Plan also recommends that commercial development should have site design features that limit noise, lighting, and other activity so as to not adversely impact surrounding residential areas. The MAPC has an unofficial policy of supporting the expansion of existing businesses when appropriate.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to replatting the property with the existing ownership within one year and the following conditions. Staff would like to make the applicant aware that:

1. At the time of re-platting, a cross-lot circulation agreement between this lot and the lot directly to the south assigning maintenance responsibilities will be requested. Access to both lots shall be from the existing driveway on this lot or by a new joint driveway.
2. At the time of re-platting, an additional 20 feet of right-of-way shall be dedicated as West Street right-of-way.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning and land uses are predominantly commercial to the north, south, and east with residential zoning and uses to the west.
2. The suitability of the subject property for the uses to which it has been restricted: Due to the commercialized nature of West Street, the subject property has become less desirable for residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested zoning would be consistent with the surrounding zoning along West Street and should have minimal impact on nearby properties.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies strip commercial uses along West Street between Maple and Central Avenue. The commercial locational guidelines of the Comprehensive Plan recommend that commercial uses should be located in compact clusters versus extended strip developments, except for areas and streets where these uses already exist or where traffic patterns, surrounding land uses, and utilities can support such uses.
5. Impact of the proposed development on community facilities: The applicant's request should not have a negative impact on community facilities. The proposed use would have minimal impact on traffic in the area.

VERTS "CPO Council 4 voted to approve 7-0. Are there any questions?"

CARRAHER "Mr. Chair, I need to announce that I will excuse myself from this case, due to the fact that this issue, last Thursday, went through CPO 4 and seeing as how I was a voting member of that council, I took a stand on this issue, and it would make a conflict of interest if I were to participate."

GAROFALO "Are there any questions of staff? Okay. We will hear from the applicant."

BOB KAPLAN "I am at 430 North Market. There is no issue, Commissioners, of which I am aware that I need to speak to, except I would ask only that you defer the access driveway issue to platting. That does create some difficulties. My client does nothing but commercial work, which means he serves Sedgwick County, the City of Wichita, the Sedgwick County Zoo and landscape companies. We are talking about very large vehicles and very large trailers, so access is very, very, very relevant. So if we can defer that to platting, then I think the rest of the case is pretty much a non-event. But I would not want approval with a condition requiring that if we share a driveway with a transmission shop, we simply couldn't get in and out. And we don't even know if they would do it anyway. I will answer any other questions."

GAROFALO "Are there any questions of Mr. Kaplan. Okay."

KAPLAN "I have some other ideas that I can discuss with Mr. Krout when we have some time to do so."

GAROFALO "Is there anyone else here to speak in favor of this application? Is there anyone opposed? If not, we will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The zoning and land uses are predominantly commercial to the north, south, and east with residential zoning and uses to the west. The suitability of the subject property for the uses to which it has been restricted: Due to the commercialized nature of West Street, the subject property has become less desirable for residential uses. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested zoning would be consistent with the surrounding zoning along West Street and should have minimal impact on nearby properties. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies strip commercial uses along West Street between Maple and Central Avenue. The commercial locational guidelines of the Comprehensive Plan recommend that commercial uses should be located in compact clusters versus extended strip developments, except for areas and streets where these uses already exist or where traffic patterns, surrounding land uses, and utilities can support such uses. Impact of the proposed development on community facilities: The applicant's request should not have a negative impact on community facilities. The proposed use would have minimal impact on traffic in the area.) I move that we recommend to the governing body that the request be approved, subject to replatting of the property with the existing ownership within 1 year.

FRYE moved, **LOPEZ** seconded the motion, and it carried unanimously with 9 votes in favor. Carraher abstained.

11. **Case No. PUD #10** – Brandt Real Estate 13, LLC, (owner); c/o Curry Brandaw Architects and Savoy, Ruggles & Bohm (agent) request a zone change from “SF-6” Single-Family District to “PUD-10” Planned Unit Development for assisted-living facility on property described as:

The North 35 rods of the East 68 ¾ rods of the Northeast Quarter of section 18, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, except that part platted as Brandt Commercial Addition, Wichita, Sedgwick County, Kansas, and except the North 40 feet thereof for road. Generally located west of the southwest corner of 13th Street North and Maize.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting a Planned Unit Development (PUD) to permit an assisted-living facility on 4.5 acres currently zoned SF-6, Single-Family. The unplatted application area is located approximately 750 feet west of the southwest corner of 13th Street West and Maize Road.

As proposed, the PUD would have one parcel. The parcel would permit a maximum of 115 retirement /assisted living units, for a density of 25 .5 units per acre. This is within the density allowed by the “MF-29” Multi-Family District, although it is higher than the densities of most existing assisted living projects in the City. The facility would offer studio, one and two bedroom units. Common facilities would include the common dining room and kitchen for shared meals, a multipurpose room, a beauty shop, a crafts room, a TV room, lounges and an exercise room. The circulation focuses on the central atrium, the tallest portion of the structure. Landscaping, patios and walking paths are to be provided on the site.

The proposed architectural design includes a three-story facility with step-down to single story on the ends of the buildings, although the step-downs occupy a fairly short length overall length of the structure. The proposed construction is wood frame with stucco or vinyl and brick siding, and an asphalt single roof. Setbacks are shown as 40 feet on the north and west, which is nearest to single family uses. The setbacks are 20 feet on the east, which is adjacent to commercial, and 20 on the south bordering single-family residences and apartments. A landscape buffer of evergreens is shown on the development plan. This buffer is developed at 1.5 times the required amount per the Landscape Ordinance. No screening fence is shown and none is required in the zoning or landscape codes for multifamily use abutting lower density residential lots, so long as a 15-foot wide buffer with trees and shrubs is maintained. The PUD includes a diagram for the monument sign four feet in height and approximately 24 square feet in size.

Parking is provided at a ratio of 0.75 spaces per unit. This is the minimum in the zoning code for assisted living; below that required in typical multifamily development of 1.25 per efficiency and 1-bedroom units, and 1.75 per two-bedroom or larger units. However, the nature of the senior clientele reduces the anticipated need for parking spaces. The applicant has constructed over 150 retirement residences and has found that, typically, 0.5 parking space per suite is adequate for residents, staff and visitors.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: “TF-3” Two Family Duplexes
SOUTH: “SF-6” Single Family Single-family, garden apartments
EAST: “LC” Limited Commercial Undeveloped land
WEST: “SF-6” Single Family Single-family residences

PUBLIC SERVICES: Municipal water and sewer services are available. Access is available via one opening along 13th Street West, a four-lane arterial.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “low density residential”, with the land across 13th Street North being shown as medium density residential and the property to the east being shown as commercial. The area is designated for “New Growth” in the Area Treatment Classification Map of the Comprehensive Plan. Its proximity between property developed residentially in single family on one side, duplex on another, single-family and garden apartments on a third, and zoned for commercial on the remaining side makes it a candidate for infill development. In this situation, higher densities would correspond to the Objective II (A) Land Use-Residential of the Comprehensive Plan to “encourage infill and higher density residential development which maximizes the public investment in existing and planned facilities and services.”

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and subject to the following conditions. The only concern is with the third story dormers in the far west corner of the proposed building, 40 feet from and directly facing the rear of two single family lots. We feel that this is not an adequate relationship and recommend that those dormers be eliminated and the third floor plan be modified as necessary.

1. The development of this property, including landscaping, shall proceed in accordance with the development plan and

elevations as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development. The development plan and elevations shall be modified to eliminate the dormers located closest to the west property line adjacent to the single-family homes on the northern segment of Manchester Court.

2. A buffer of evergreens shall be provided at a rate of 1.5 times the minimum density required for a buffer along the south and west property line.
3. One monument sign shall be allowed and shall be approximately 24 square feet in size and eight feet in height, as shown on the development plan.
4. Any substantial deviations in the development plan shall be submitted to the Planning Commission and the Governing body for their consideration and denial or approval.
5. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a terminating of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
6. All property included within this PUD shall be platted within one year after approval of this PUD by the Governing Body, or the case shall be considered denied and closed. The resolution establishing the PUD shall not be published until the plat has been recorded with the Register of Deeds.
7. Prior to publishing the resolution establishing the PUD, the applicant(s) shall record a document with the Register of Deeds indicating that this tract includes special conditions for development on this property.
8. When necessary, the applicant shall submit revised copies of the PUD to the Metropolitan Area Planning Department within 30 days after approval of this request by the governing body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property adjacent to the application area is surrounded by a mix of uses, including single family, duplexes, garden apartments, and property being developed for commercial use. The zoning corresponds with these uses, except the garden apartments are zoned "SF-6" because the area is a part of a Community Unit Plan with mixed densities of residential uses within the C.U.P. The range of uses suggests that infill with a higher density residential assisted living apartment complex would be a potential transition use with the surrounding mix of residential/commercial uses, if the west corner of the building closest to the lots to the west is modified per staff recommendation.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "SF-6", Single-Family. Typical uses permitted by right in this district include: single-family residential, churches, limited day care, limited group home, parks and golf courses. The site could be developed with any of those, consistent with its existing zoning. However, the small size and position next to higher density zoning makes this site less desirable for single family lots.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The higher density residential use would be adjacent to existing single family residences. However, the proposed landscape materials, increased buffer setback along the north and west property lines, and the architectural design, with the staff-proposed changes, minimizes the detrimental impacts on neighboring properties.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The plan recommends the use of PUD/CUPs as a way to provide unified and integrated developments for mixed use and higher density projects. Higher density development is consistent with the Plan's recommendation to encourage infill and higher density residential development that maximizes public investment.
5. Impact of the proposed development on community facilities: None identified. Assisted living projects generate lower traffic volumes per unit than single family or traditional apartment developments.

GOLTRY "This case was heard last night by CPO 5, and they voted 4-1 in favor of approval. There was some opposition present. Some of the things we pointed out was that we have looked at this as an infill development because it is at relatively high density of 25 units per acre. But if you notice, from the area along here (indicating), this is all part of the Huntington Place CUP of mixed densities. These are lower density and somewhat slighter elevated density and quite high density there of garden apartments. This is already slated for commercial, 'TF-3' (indicating to the east) and (indicating to the north).

The main concerns that the neighbors expressed were drainage, because apparently there are already drainage problems on the rear of their properties. It was expressed and the engineer can detail that more if he needs to, that their drainage will be going north toward 13th Street, so it should not impact the use. Also, of course, they were concerned with the change from 'SF-6' Single-Family to the assisted units. Are there questions of staff?"

LOPEZ "I have a question. In the presentation to the CPO, were the elevations submitted for them to look at?"

GOLTRY "They should have been in their packet that they received."

LOPEZ "Those elevations have been provided to us."

GOLTRY "Okay. They should have been provided to everyone."

WARREN "So, what we are approving here is just PUD."

GOLTRY "A Planned Unit Development, yes."

WARREN "And the zoning will come in later then?"

GOLTRY "This is a zoning change. A PUD is a unique classification."

WARREN "I knew that...it says the current zoning is 'SF-6'. It is going to be what?"

GOLTRY "PUD."

WARREN "Oh, okay. So PUD is a zoning classification."

MCKAY "Richard, you said that there was a drainage plan."

LOPEZ "No. I said there were elevations here."

MCKAY "You mean elevations of the building, not drainage elevations."

LOPEZ "No. There are building elevations."

MCKAY "Okay. Well, it seemed to be a concern of the CPO, that was drainage, and I guess my questions is has that been taken care of to the satisfaction of staff?"

KROUT "We would say, as we always do that that is an issue to be resolved in the platting stages."

MCKAY "Okay. I just wanted to get that on record."

GAROFALO "Could we hear from the applicant now?"

MICHAEL FULLER "I am with Curry Brandaw Architects, 2216 McGilchrist in Salem, Oregon. I don't have too much to say. The staff has been working with us quite closely. We have met with the neighbors two times and the drainage was the major issue with the facility, and in working with Mark Savoy, our Civil Engineer, we have determined that the storm drainage water from our site will be maintained on our site and piped to 13th Street. To the existing storm drain system in 13th Street.

In designing the facility, we have seen it as a buffer between the existing commercial zoning and the existing residential on the other side. We have increased our setbacks and landscape buffers along the residential side. There is one staff recommendation that is not really a condition, but a recommendation, that talks about removing some dormers. Those dormers are located right here where we have a 40-foot setback from the property line. Those dormers and the windows in those dormers are actually 44-1/2 feet from the property line. They are adjacent to the closest neighbors here and those two closest points are garages on those neighbor's houses.

We have asked, in working with the staff, and it would be very hard for us to remove those, we could redesign to make a different type of unit there, but that corner of the facility is actually a very nice looking corner. It has a lower floor deck with a patio above that is covered on the second floor and then the third floor is step back. It has a lot of articulation and it really looks very nice. Our proposal was that we would provide some 20-foot tall Austrian pine trees in that landscape buffer. In the section I had done for staff, it showed that that buffer would be adequate in screening those back yards by having a 20-foot high buffer. Anything else, I can just handle as questions."

GAROFALO "Okay. Are there any questions?"

FRYE "I know you have put these up throughout the Country, and I am very impressed by your facilities that I see here. What is the range of these? They rent these, right? Okay, what is the price range?"

FULLER "In general, we provide a studio, one bedroom, and two bedroom units within the facility. The range for a studio unit is probably \$1100 to \$1300. The studios vary in size. All of the units vary in size. And then two bedrooms might rent for \$2200 to \$2500 per month. Those rentals include all of the provided services, three meals per day, linen services and all of the housekeeping as well."

FRYE "But nothing medical?"

FULLER "No. Nothing medical."

MCKAY "Can you provide medical?"

FULLER "No. There is no medical."

MCKAY "I am saying that because it says something about assisted living."

FULLER "That definition fits your Zoning Code. That is why it was called that. It is a retirement facility. Our residents are about 70 years of age. Very ambulatory, very active still."

GAROFALO "Did you say you were from Salem, Oregon?"

FULLER "Yes."

GAROFALO "How are you getting along with this heat?"

FULLER "It hasn't been this hot in Oregon in two years. This is tough, but it is nice in here."

MCKAY "My only question is that they said they were going to retain their water on-site. This site plan, the way I look at it, has no place to retain it."

FULLER "We don't have retention ponds shown. Mark has been working out some of the details of that. What we will do is swale the water from the property line into our site, collect it in smaller swales piped into the underground system and take it out to 13th Street."

MCKAY "So you are not going to retain, you are just going to provide a swale to provide drainage."

FULLER "There shouldn't be any retention required. Over 50% of the site is landscaped, so we have quite a bit of area that will be available for natural percolation. The roof water, and all of the water from the parking lot will be collected in our own private storm drain system and put into the storm drain out to 13th Street."

GAROFALO "I didn't count, but is there enough parking here?"

FRYE "Most of these people don't have cars."

GAROFALO "You would be surprised. I have a relative that lives in Sedgwick Plaza, and there are times when you can't find a place to park."

FULLER "With the PUD I think we are showing .75."

KROUT "They said that they really think they only need .50, but they do show .75."

FULLER "Typically, about 25% of our residents will drive. That would be quite a few less than we have shown now."

MCKAY "I own two of them, and I don't agree with that. That is assisted living that would have more than 25% driving."

FULLER "We have 180 of these all over, and that is what we show."

MCKAY "Let me say that ours show that more than 25% drive."

WARREN "Is the site plan required though to have a building permit?"

MCKAY "At platting."

WARREN "When he goes in for a building permit, he is going to have a site plan and a drainage plan, and a parking plan. All of that is going to have to comply with the law. I don't see why we have to get into that."

MCKAY "No. I thought the comment was made that they were going to retain the water on site, and on their plan they don't show that."

FULLER "What I really meant by that was control it. We are not going to be having our water drain into the back yards of any of the adjacent properties."

GAROFALO "Are there any other questions of the applicant? Thank you. Is there anyone else here to speak in favor of this application? Is there anyone here to speak in opposition? I will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The property adjacent to the application area is surrounded by a mix of uses, including single family, duplexes, garden apartments, and property being developed

for commercial use. The zoning corresponds with these uses, except the garden apartments are zoned "SF-6" because the area is a part of a Community Unit Plan with mixed densities of residential uses within the C.U.P. The range of uses suggests that infill with a higher density residential assisted living apartment complex would be a potential transition use with the surrounding mix of residential/commercial uses, if the west corner of the building closest to the lots to the west is modified per staff recommendation. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "SF-6", Single-Family. Typical uses permitted by right in this district include: single-family residential, churches, limited day care, limited group home, parks and golf courses. The site could be developed with any of those, consistent with its existing zoning. However, the small size and position next to higher density zoning makes this site less desirable for single family lots. Extent to which removal of the restrictions will detrimentally affect nearby property: The higher density residential use would be adjacent to existing single family residences. However, the proposed landscape materials, increased buffer setback along the north and west property lines, and the architectural design, with the staff-proposed changes, minimizes the detrimental impacts on neighboring properties. Conformance of the requested change to adopted or recognized Plans/Policies: The plan recommends the use of PUD/CUPs as a way to provide unified and integrated developments for mixed use and higher density projects. Higher density development is consistent with the Plan's recommendation to encourage infill and higher density residential development that maximizes public investment. Impact of the proposed development on community facilities: None identified. Assisted living projects generate lower traffic volumes per unit than single family or traditional apartment developments.) I move that we recommend to the governing body that the request be approved, subject to staff recommendations.

LOPEZ moved, **FRYE** seconded the motion.

KROUT "Does that include the substitute of 20 foot pine trees and allowing the third story dormers that are overlooking those two lots?"

MCKAY "Is that a decorative dormer, or is it a usable dormer for an apartment?"

FULLER "Those are dormer windows that go into a usable apartment."

MCKAY "So there would be light coming out of that in the evening, or something to that effect?"

FULLER "Yes."

MCKAY "And you are going to do the 20 foot pines?"

FULLER "Yes. And those pine trees would only be in the area adjacent to those dormers. They would not be the full length."

MCKAY "Is it the equivalent of what you have here on the corner of your drawing? The elevation? See, those dormers on the third floor? Is that what you are talking about, similar to those?"

FULLER "Exactly."

MCKAY "Okay."

VOTE ON THE MOTION: The motion carried unanimously, with 10 votes in favor. There was no opposition.

12. **Case No. DP-237 Amendment #1** – Via Christi Property Services, Inc. c/o David Mohr and R. & R. Realty, LLC c/o Kevin Mullen (owners); Baughman Company, P.A. c/o Terry Smythe (agent) request an amendment to the Ridge Port North Community Unit Plan on property described as:

Lot 2, Ridge Port Addition, Wichita, Sedgwick County, Kansas. Generally located at the southeast corner of 37th Street North and Ridge Road.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant proposes to revise the development plan for Parcel 1 in order to make three changes to the approved DP-237 Ridge Port North Community Unit Plan. The applicant is requesting that a helistop (heliport) be added to the list of allowed uses and that the maximum height of the buildings be increased from 35 feet to 65 feet. The restriction on the maximum number of buildings in Parcel 1 has been eliminated. It was previously set at a maximum of eight buildings. The other change is to reduce the platted setback reserve required between nonresidential and residential uses from 300 feet to 200 feet.

Helistop is permitted with a Conditional Use in the "GO" General Office zone and is defined in Chapter 9.24 of the Code of the City of Wichita. Chapter 9.24 specifies restrictions on the location of helistops, requires evidence of compliance with the Unified Zoning Code, and requires a site plan. The Conditional Use review for a helistop contained within a C.U.P. can be incorporated within the DP review process and does not require the separate filing of a Conditional Use request. However, it does require submittal of a site plan and demonstration of meeting location requirements per Chapter 9.24. As of this time, we have not received the site plan for the helistop.

The maximum building height is proposed to increase from 35 feet to 65 feet. The height restrictions in the "GO" General Office zone are 60 feet, plus one foot of additional height for each foot of setback beyond the minimum required setbacks. The setbacks for 37th Street North and Ridge Road are shown on the C.U.P. as 100 feet, which would allow a greater height, up to 73 feet, except for the stipulation included in the C.U.P. with 65 feet as the maximum building height. It should be noted that along the east and south property lines where the adjacent property is zoned for single family use, compatibility setback standards would control the maximum height allowed. In order for the building to be 65 feet in height, the building would have to be 140 feet from the property line. The applicant does not propose to increase the maximum gross floor area or the floor area ratio. Since this increase in height is not accompanied by any increase in overall density, it should not have any impact on traffic or utilities. The main impact will be to add height to the skyline of Parcel 1. Also, the elimination of the maximum number of buildings should not affect the overall character of the development since the gross floor area and maximum building coverage have not been changed.

The proposed reduction of platted reserve area from 300 feet to 200 feet for nonresidential use when adjacent to residential uses still maintains an adequate setback for separation of uses. The applicant has the option of constructing a six-foot high concrete wall instead of providing the platted reserve setback. In this case, the minimum setback would be 100 feet on the south property line of Parcel 1 and 35 feet on the southeast and the eastern property lines of Parcel 1.

Parcel 1 comprises the main parcel of the Ridge Port North C.U.P., and is intended for development of a satellite hospital for Via Christi, to be surrounded by ancillary medical offices and support services. Parcel 1 is 70 acres of the total development of 83 acres. Parcels 2, 3 and 4 are located nearest the southwest corner of 37th Street North and Ridge Road and are zoned "LC." Parcels 5 and 6 are located in the southwest corner of the development and are zoned "NR" Neighborhood Retail. The area around the property is zoned "SF-20" Single Family and "SF-6" Single Family and is undeveloped except for a farmstead to the northeast and the subdivision under development along the southeast portion of Parcel 1.

CASE HISTORY: The site was approved on December 30, 1998 as DP-237 Ridge Port North C.U.P. and rezoned to "GO" General Office (SCZ-0777). The property was platted as part of Ridge Port North Addition, recorded April 28, 1999.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" and "SF-20" Undeveloped land
SOUTH: "LC" and "SF-6" Undeveloped; residential subdivision being developed
EAST: "SF-20" Undeveloped land
WEST: "SF-20 and "LC" Undeveloped land, but approved for office/retail uses

PUBLIC SERVICES: This site has access to 37th Street North, an unimproved roadway, and Ridge Road, a four-lane arterial. Current traffic volumes along Ridge Road are 7,717 cars per day. The 220 Transportation Plan estimates traffic volumes along this roadway will increase to 15,275 cars per day.

Petitions for sanitary sewer, municipal water, drainage, paving, and street improvements have been submitted.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as agricultural. However, the property was approved for rezoning and C.U.P. development in 1998 due to the continued northern expansion of urban development, the widening of Ridge Road, the proximity of the K-96 freeway interchange one-half mile north of the site, and the plan to extend sewer service. All of these factors make the area ripe for urban development.

RECOMMENDATION: The proposed amendment does not alter the character of the C.U.P., and the addition of helistop to the permitted uses would enhance the functioning of the proposed hospital to provide emergency services to patients in need of transfer to regional hospital facilities. However, since we have not received the site plan for the helistop and have been unable to review it, Staff recommends the application be DEFERRED, unless Staff receives a site plan in enough time to make verbal recommendations to the MAPC at the July 29th meeting. Should the MAPC vote to approve this request, Staff recommends the following conditions and findings:

- A. APPROVE Amendment #1 to Community Unit Plan (DP-237), subject to the following conditions:
1. The applicant shall submit 4 revised copies of the C.U.P. and site plan to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.
 2. Any additional conditions determined by the review of the site plan for the helistop.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is undeveloped agriculture land to the north and west, which is zoned "SF-20" and "LC." The City of Wichita recently annexed the subject property and the property to the south, which is being developed as Ridge Port Subdivision. East of the application area is undeveloped land that is currently zoned SF-20." Property to the west has been approved for retail and office use. It is anticipated that other property along Ridge Road south of the K-96 interchange will be developed in the future once sewer service is available.
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned for "GO" General Office and is approved for the proposed development. The amendments will allow a structure with greater height than was previously approved by the C.U.P.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The allowance of helistop can be expected to generate occasional noise in the surrounding area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this area as agricultural. However, the changing factors of urban expansion northward from 21st Street North, the widening of Ridge Road, the proximity to the K-96 interchange, and the addition of sewer service all point to the need to update the Comprehensive Plan guidelines for this area to reflect its ripeness for urban development.
5. Impact of the proposed development on community facilities: This amendment would not create any additional impacts on community facilities. The addition of the helistop would expand the number of facilities offering emergency air service.

GOLTRY "Basically, the amendment calls for three changes. One change is to reduce the platted setback reserve along the south and east parts of the property from 300 feet to 200 feet. Those platted setback reserves are for the eventuality that as the site is developed, it will be developed with non-residential uses adjacent to residential. The applicant does have the option of instead providing a 6 to 8 foot high screening wall in lieu of the 200 foot platted reserve area and then they would abide by the other plat settings."

GAROFALO "On the recommendations, staff recommends deferral unless staff receives a site plan."

GOLTRY "We were recommending deferral on the grounds that we did not have a site plan at the time the staff report was prepared for the request for the helistop, which is one of the three things that they are requesting. They are requesting the (1) change in the platted setback reserve, (2) the change in the building height and also deleting the maximum number of buildings. The third change is to allow helistop to be added as a permitted use."

Helistop is an activity that requires a Conditional Use within our Zoning Code, and it also interfaces with Chapter 9.240, the City Code on helistops, and therefore we were trying to roll the Conditional Use portion of the application within the CUP amendment, to get it all done at once."

GAROFALO "But have you received it?"

GOLTRY "I have received a preliminary site plan, and I will pass that out to you. I have not had an opportunity to get all of the staff comments back from internal staff reviews at this point."

The preliminary site plans accomplishes all of the required features. What it doesn't speak to is the location of the buildings surrounding it; parking, etc., and as I said, I haven't received all of the internal staff comments back on that."

We have recommended that the height amendment be allowed, and that the amendment for the change in platted setback be allowed. We did note that because we hadn't had time to finish the site review on the helistop that we would ask for a deferral. I believe the applicant would like us to take some action on this case at this point. Are there questions?"

OSBORNE-HOWES "So are you still recommending deferral because you haven't had enough time to give us recommendations?"

GOLTRY "We haven't had the time to prepare recommendations. We really need to wait until we get the rest of the staff comments. I can tell you that this site plan meets the minimum requirements set out in Chapter 9.24 for locational requirements whether it actually is approvable as a site plan, it is a little bit preliminary on that portion of it. I also will point out that as part of the licensing requirements for Chapter 9.24, they have to go through site plan review and come back to MAPC for MAPC sign-off on the helistop."

GAROFALO "How much of a deferral, two weeks?"

GOLTRY "I think we should allow the applicant to respond to that question."

GAROFALO "All right. Are there any other questions of staff? Applicant or agent?"

TERRY SMYTHE "I am with Baughman Company, here on behalf of the applicant. I think the issue before you is the helistop. In reviewing Chapter 9.24, we have to, when we apply for our license, show evidence of compliance with the Unified Zoning Code. That is what we are doing here today. We are asking your permission to have a helistop on this property, associated with the hospital. As you know, this CUP is being developed; we don't know the specific location of all of the medical offices or the hospital. We have a general idea, but we don't know all of them and we won't know for a couple more years, at the most. So it is going to be difficult, if not impossible, for us to show an over-all site plan where all of the buildings are going to be today."

We, and the architect, interpreted the chapter as a site plan showing specifically what you saw on the slide today. The location, away from the property lines, indicating that it was in compliance with this. Chapter 9.24 says that when I apply for the license for the heliport, I have to show evidence of compliance with the Unified Zoning Code; a site plan; a map showing intended approach and take-off routes, FAA letter of air space determination, FAA statement of no objection to the approach and take-off zones; the number of operations daily for each helicopter listed; the days and hours of operation; a description of fueling facilities; the name of the insurance carrier, evidence that existing airports are not negatively impacted.

All of those have to be applied to and signed off by the FAA, the Airport Authority, the Metropolitan Area Planning Commission and the Wichita Fire Chief. So the detailed site plan will come when we know the details. I think the confusion here is should we be showing a site plan exactly where the hospital is going to be, where all of the parking lots are going to be, and where all of the other buildings are going to be. We don't have that information yet. Personally, I interpreted 9.24 as saying 'show the site plan of the heliport'. If this was a heliport at, say the existing Wesley or St. Francis Hospitals, yes, we would know all of the locations of every specific building, but at this time, and quite frankly for a little bit longer, we won't have that.

But for me to start the process to apply for the FAA license, I need to show that I am in compliance with the Unified Zoning Code. I think that may be where part of the confusion is. Our preference is not to have this thing deferred. You will have the ability as well as the FAA, the Fire Chief, to review the detailed site plan when it becomes available with more details. What we are showing on the sketch you have that Donna handed out to you, basically shows that we are in compliance with 9.24, in terms of the location. We can accommodate, location-wise, a heliport on our site and still comply with 9.24.

The other parts of the case are really a clarification that we want to build a multi-story hospital. The old CUP, we asked for a 35-foot height restriction and now we are asking for 65 feet to allow for a multi-story to occur. The other part is a determination of where the walls would be built. When we abut up to residential property, if you look at the site plan for the helistop, you will see a series of detention ponds along the south side, and a little bit on the east side. As we describe those a little better, in terms of drainage, we are realizing that those ponds are probably about 200 feet wide, so I am asking the ability to use those ponds, both for the residents of the hospital and the campus, as well as the homeowners as they come in off of Ridge Road that they would be able to see the pond. If I have to build a wall between the pond and the road, quite frankly I won't be able to market that property with the ability to see the ponds and the fountains. So we ask that that reduction go from 300 feet down to 200 feet. If we are closer than that and there are no ponds, obviously we have to build a screening wall. Any questions?"

OSBORNE-HOWES "This is going to be a real, full-service hospital?"

SMYTHE "Yes."

OSBORNE-HOWES "Staff is only asking for deferral regarding the helistop, is that right? Because what I am seeing is a proposed use that talks about more than the helistop. The maximum building height and all, have you talked about that?"

KROUT "We are fine with those other issues; the reserve, and the height."

OSBORNE-HOWES "If you are fine, that's fine. So it is only the helistop, and everything else you have agreed to with staff, Terry?"

SMYTHE "Yes."

JOE LANG, Law Department "Mr. Chair, I am questioning here whether you need a deferral, because what they are asking for is the amendment to the zoning aspect, which all that is is determining whether a helistop is an appropriate use on this property. The licensing process, which is handled by the Fire Chief and goes through a long process; the only thing I am seeing there would be that they have to show evidence of compliance with the Unified Zoning Code, which would be showing that this was an appropriate use for that property. So I don't think the site plan and the approach and the take-off, etc., is anything that you need to review as part of this process. That will come later, during the licensing process, when they know how many operations they need and the design of their heliport, etc."

KROUT "The heliports are only allowed by Conditional Use, unless they are part of a CUP and then the same process and the same requirements to amend the CUP stand as if it was a Conditional Use and the Conditional Use has a requirement to submit a detailed site plan."

LANG "Okay."

KROUT "And I think it is reasonable, as part of the zoning and land use determination to have an understanding of what the surrounding character of buildings and parking areas is before you decide that it is an appropriate location for a heliport. I guess that is the question that I want to ask. What is your timing on this, not knowing for two years where your buildings are going to be located and what your site plan for this campus area is going to look like, do you expect to be operating a heliport any time before that?"

SMYTHE "Yeah, I think within two years we will have a helistop up there. I think part of what the architect is trying to do is to find out if we can have a helistop, how does he design that campus to accommodate a helistop? It's kind of a chicken and egg kind of theory, in my opinion. Trust me, if I had elevations, I would be showing them to you."

MCKAY "Can this be approved subject to those drawings?"

KROUT "I think there needs to be a site plan, and what he has submitted to you is a site plan. It doesn't indicate what any of the surrounding uses are, but what he is doing is, I guess by doing this, you are setting the constraints that say there will not any buildings within these planes we are setting in the north/south and east/west direction. That will then limit how he does his site plan. I guess I would say that because there is a further requirement under Chapter 9 in the future, although I am not real comfortable with this, I guess we do have the ability, before it can be approved at a later date, for the Fire Chief to take another look at it when there are more detailed plans available for the surrounding area."

LANG "I will stand corrected on, that part of the Conditional Use application is the site plan. I guess that is your determination of whether this is sufficient enough to make the issue of whether a helistop is an appropriate use on this property."

MCKAY "Isn't this a kind of chicken and egg type scenario?"

KROUT "That is what I am hearing."

MCKAY "So if we approve this, they have to design something around it?"

SMYTHE "That is my impression."

KROUT "And I wasn't aware that FAA requires a certification of zoning before they will review it. We have had towers and other requests where the FAA didn't require it."

LANG "That is part of the licensing certification for the zoning."

WARREN "Am I correct in assuming that we have about 65 acres in here?"

MCKAY "It's 80 some acres overall isn't it?"

WHEELER "It says 70."

WARREN "Seventy? Okay. It seems to me that we could give some kind of a high sign to say 'yeah, this is a good use', and there is enough checks and balances between now and the time the helicopter lands to ascertain that everything is safe and proper. I would think that we could make a declaration here that this is probably a reasonably good place for what they are going to do. I don't know if that satisfies what you need or not."

LANG "If you have any additional conditions you want in addition to the licensing, this will be your only opportunity to do that."

WARREN "But it all would relate to the helistop, not to the whole project?"

LANG "Right."

WARREN "What other requirements would we have, Marvin, for just a helicopter landing?"

KROUT "I think those would be in the licensing requirements. I think it is really mostly a locational issue and not a safety issue, and we don't have any other recommendations for you. I really am a little uncomfortable with this because it is premature and not really a complete site plan, but I think that in this particular case, there is the other check, like you say, that we will, after Chapter 9, have the Fire Chief review the site plan again. So I think that this is a way to get your site plan going and to know what your constraints are for the rest of the site."

WHEELER "I have a question. Are we today approving an amendment or an Conditional Use permit?"

KROUT "It is an amendment to the CUP. Heliports need Conditional Uses in any district, but when you have a CUP overlay in place already, then rather than apply for a separate Conditional Use and have a Conditional Use application on top of the CUP, the Zoning Code says that all you need to do is add it as a use by CUP, but you have to have a site plan and then you can add any other conditions that you deem appropriate."

WARREN "In order to satisfy what he wants, could you develop a motion here for us?"

KROUT "I think that you can recommend approval and I think there is enough checks and balances in Chapter 9 to take care of anything further /"

WARREN "The approval, then, would be subject to..."

KROUT "Subject to the site plan that has been submitted."

WARREN "But it would also be subject to granting them the right of 65 foot?"

KROUT "Yes. All of the other requests. Subject to staff comments."

MCKAY "He isn't against the recommendations, he is against the deferral."

SMYTHE "That's right."

KROUT "But I am saying that we won't really have more information for a year or two, so if you are comfortable, then we are semi-comfortable with going ahead and approving what was submitted to you as a site plan, knowing that there will be more details later on before they can get a license."

GAROFALO "Terry, are you saying that you don't want a deferral because you would not have a more detailed site plan?"

KROUT "I think that is what he is saying. They won't have anything in 2 weeks or 4 weeks. They are going through a master planning process and it could take them a year or two years."

SMYTHE "That is correct. We could go through the procedure to develop a site plan and then have to come in a year from now and say 'okay, now we need to modify it'. I guess I don't want the architect sit down and come up with a site plan that he is guessing at. I am saying it is going to take maybe another year for them to fully start developing this campus to find out all of the uses and all of the other uses around there. Give me evidence that I can have a helistop, and per the site plan today, we will build around that. And, if we have to move it, we will be back in front of you again."

KROUT "And if you have to move it just slightly, we can do that administratively. If you have to move it in a wholesale way, you will have to come before the Commission."

SMYTHE "That's correct."

GAROFALO "Are there any other questions?"

MICHAELIS "I thought basically all we were doing was asking whether we could put a helistop on this site and at a later time, an exact location would be determined."

SMYTHE "That was my original intention."

GAROFALO "I was going to say that we have been without a hospital on the west side for the last 35 years, and I was just wondering what the big rush was now."

OSBORNE-HOWES "You don't live on the West Side, do you?"

GAROFALO "It looks like it is going to be another five years, probably."

WARREN "Marvin, your recommendation for approval is to go ahead and grant them that 65 foot?"

GAROFALO "And including the other 200 to 300 feet? Okay. Is there anyone else here to speak in favor of this application? Is there anyone opposed? Okay, I will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There is undeveloped agriculture land to the north and west, which is zoned "SF-20" and "LC." The City of Wichita recently annexed the subject property and the property to the south, which is being developed as Ridge Port Subdivision. East of the application area is undeveloped land that is currently zoned SF-20." Property to the west has been approved for retail and office use. It is anticipated that other property along Ridge Road south of the K-96 interchange will be developed in the future once sewer service is available. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned for "GO" General Office and is approved for the proposed development. The amendments will allow a structure with greater height than was previously approved by the C.U.P. Extent to which removal of the restrictions will detrimentally affect nearby property: The allowance of helistop can be expected to generate occasional noise in the surrounding area. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this area as agricultural. However, the changing factors of urban expansion northward from 21st Street North, the widening of Ridge Road, the proximity to the K-96 interchange, and the addition of sewer service all point to the need to update the Comprehensive Plan guidelines for this area to reflect its ripeness for urban development. Impact of the proposed development on community facilities: This amendment would not create any additional impacts on community facilities. The addition of the helistop would expand the number of facilities offering emergency air service.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. APPROVE Amendment #1 to Community Unit Plan (DP-237), subject to the following conditions:

- A. The applicant shall submit 4 revised copies of the C.U.P. and site plan to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.
- B. The development of the helistop shall be in substantial conformance to the site plan attached hereto. Any substantial deviations in the site plan shall be submitted to the Planning Commission and the Governing body for their consideration and denial or approval.

MICHAELIS moved, **OSBORNE-HOWES** seconded the motion.

KROUT "That means approving the heliport, subject to the site plan submitted today."

VOTE ON THE MOTION: The motion carried with 10 votes in favor. There was no opposition.

13. **A-9922** – The City of Wichita seeks the annexation of properties described as various unincorporated islands within or abutting the west and north parts of Wichita.

KROUT "Bob is putting the map on the easel now that shows you the scattered properties that are islands or nearly islands. Most of them are west of the Big Ditch; there is one that is not, in the area of I-235. You can see that at the very top of the map. All of those areas are marked in red. A service plan has been provided for all of these areas. A couple of exceptions are in the identified urban growth area in the Comprehensive Plan. The areas that are not are, I think, the ones that are between 29th and 37th Streets, which we have since identified as urban growth area, based on the sewer plan development for the northwest area.

We are recommending that you find that these annexations, the City Council has a scheduled hearing, would be in conformance with the Comprehensive Plan. We need a motion."

GAROFALO "Is there any discussion or any questions?"

MOTION: I move that we find that the areas are appropriate for annexation and compatible with the adopted Comprehensive Plan.

MCKAY moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (10-0).

14. **Consideration of proposed Sedgwick County and City of Wichita Capital Improvement Programs – determination of consistency with the Comprehensive Plan.**

KROUT "We are not prepared to talk about the City C.I.P. because we said that we ought to wait because the City C.I.P. is much more influx and we don't have a detailed C.I.P. to show us allocations, but the County C.I.P. was detailed and was in front of you. Ken Arnold is here if you have any questions, but as we said at the previous meeting, we believe that it is consistent with the Comprehensive Plan and would like a motion to that effect. If you have additional comments or recommendations that you want to make at the same time to the County, this is the time to pass those on also."

MCKAY "I have a comment. In the County C.I.P., 135th Street between Kellogg and the new golf course is not in there to be paved. I would like to make that as a recommendation because we are paving from Maple to the half-mile line."

KEN ARNOLD "I will pass that on."

KROUT "We did that last year and it didn't do too much good, but we will try again."

MCKAY "We are going to get that golf course open you guys, one of these days. It is supposed to open in June of 2000."

GAROFALO "Is there anything else anyone would like to add? We need a motion to find this consistent with the Comprehensive Plan."

MOTION: That the Metropolitan Area Planning Commission find that the Sedgwick County Capital Improvement Plan is consistent with the Comprehensive Plan.

LOPEZ moved, **CARRAHER** seconded the motion, and it carried unanimously (10-0).

MOTION: That the Metropolitan Area Planning Commission adjourn.

MCKAY moved, **LOPEZ** seconded the motion, and it carried unanimously (10-0).

The meeting was adjourned at 6:15 p.m.

State of Kansas)
Sedgwick County) ^{SS}

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 1999.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)